Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions *and* United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC and Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, Party in Interest. Cases 7-CA-16527, 7-CA-16680, and 7-CA-17014

October 29, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 15, 1981, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief in support of the Administrative Law Judge.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard by me pursuant to due notice on July 16, 17, 18, 22, and 23, 1980, in Detroit, Michigan.

The charge in Case 7-CA-16527 was filed on June 27, 1979; the original charge in Case 7-CA-16680 on August 7, 1979; the amended charge in Case 7-CA-16680 on August 22, 1979; and[1] the charge in Case 7-CA-17014 on November 2, 1979. The order consolidating cases and the consolidated complaint in this matter was issued on June 20, 1980.

The issues concern whether certain conduct of Respondent commencing in May 1979 constituted conduct violative of Section 8(a)(1), (2), (3), and (5) of the Act. In major effect some of the issues concern whether Respondent's opening of a new plant, unilateral setting of wages and terms of employment, transfer of work, and decision to close its old plant and to terminate employees constituted conduct of refusal to bargain in violation of Section 8(a)(5) and (1) of the Act, and constituted conduct of discrimination in employment in violation of Section 8(a)(3) and (1) of the Act. Further, some of the issues concern whether Respondent unlawfully assisted a union, the NMU, by granting agents access rights to its plant, by recognition of NMU as bargaining agent, by execution of a collective-bargaining contract, and by threats. Such issues concern whether Respondent has violated Section 8(a)(2) by acts of assistance to NMU, and has violated Section 8(a)(5) of the Act by the same conduct by refusing to bargain with the Charging Party, Local 26.[2]

There are also issues raised concerning the General Counsel's reinstatement of charges filed in Case 7-CA-16527 and concerning the receipt in evidence of pretrial statements of a deceased individual.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel and Respondent and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions, Respondent, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Michigan. At all times material herein until June 16, 1979, Respondent maintained its principal office and place of business at 1545 Alfred in the city of Detroit, State of Michigan.

Commencing on or around June 16, 1979, Respondent also maintained a plant in the State of Michigan at 1825 Scott Street, Detroit, and maintained and operated both said Alfred Street and said Scott Street plants until around November 26, 1979. At such time Respondent ceased operations at Alfred Street but continued operations at Scott Street. At all times during the operations at both plants, Respondent engaged in the processing,

[1] The amended charge in Case 7-CA-16680 was also served on Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, Party in Interest, herein NMU, on September 27, 1979.

[2] The reference to Local 26 herein is to United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC.

packing, sale, and distribution of meat and related products. Both plants are the only facilities involved in this proceeding.

During the fiscal year ending April 30, 1979, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed at its Michigan plants products valued in excess of $500,000, of which products valued in excess of $50,000 were shipped from said plants directly to points located outside the State of Michigan.

As conceded by Respondent and based on the foregoing, it is concluded and found that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED[3]

United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Case 7-CA-16527—The 10(b) Issue*[4]

The Union filed the charge in Case 7-CA-16527 on June 27, 1979, averring that Respondent had engaged in conduct violative of Section 8(a)(5) and (1) of the Act. Included in such charge were the usual general allegations. Further, such charge specifically averred that:

> Since in and about May, 1979, the above-named Employer has refused and continues to refuse to bargain in good faith with the Charging Party as the collective bargaining representative of an appropriate unit of its employees, by repudiating a collective bargaining agreement between the Charging Party and the Employer, entered into on December 15, 1977 and effective November 22, 1976 to and including November 22, 1979.

The Regional Director for Region 7 issued a letter on August 2, 1979, in which the parties were advised that the Regional Director was refusing to issue a complaint in Case 7-CA-16527. The Regional Director referred the parties to an enclosed form as to the procedure and deadline for filing an appeal to his "dismissal action." Thereafter, the Charging Party on August 21, 1979, appealed the Regional Director's refusal to issue a complaint in Case 7-CA-16527. On October 9, 1979, the General Counsel denied the Charging Party's appeal.

In the meantime, the Charging Party filed on August 7, 1979, a charge in Case 7-CA-16680, averring that Respondent had violated Section 8(a)(1) and (3) of the Act. Included in such charge were the usual general allegations. Further, such charge specifically alleged the discriminatory discharges of J. C. Bonner and Elmer Jordon. On August 21, 1979, the Charging Party filed an amended charge in Case 7-CA-16680, averring that Respondent had violated Section 8(a)(1) and (2) of the Act. Included in such charges were the usual general allegations and certain specific allegations. On September 28, 1979, the General Counsel issued a complaint in Case 7-CA-16680. However, the complaint was to a more limited effect than sought by the Charging Party. Accordingly, on September 29, 1979, the General Counsel issued a letter setting forth that he was refusing to proceed with allegations to the effect that Respondent had unlawfully assisted the National Maritime Union in obtaining its majority support. Thereafter, the Charging Party, on October 10, 1979, appealed the Regional Director's refusal to issue complaint in such regard.

On November 1, 1979, the Charging Party filed a charge in Case 7-CA-17014 alleging conduct violative of Section 8(a)(1) and (5) of the Act. Included in such charge were the usual general allegations. Further, such charge had specific averments including the following:

> Since in or about June, 1979, the above-named Employer has refused and continues to refuse to bargain in good faith with the Charging Party as the collective bargaining representative of an appropriate unit of its employees, including its employees at its Scott Street facility, Detroit, Michigan, by repudiating a collective bargaining agreement between the Charging Party and the Employer, entered into on December 15, 1977 and effective November 22, 1976 to and including November 22, 1979.

On November 28, 1979, the Regional Director for Region 7 apparently issued a letter advising the parties of his refusal to issue complaint in Case 7-CA-17014. Thereafter, on December 10, 1979, the Charging Party appealed such decision.

It appears that at some point of time before May 27, 1980, the General Counsel sustained the Charging Party's appeals in Cases 7-CA-16680 and 7-CA-17014.[5] On May 27, 1980, the General Counsel issued a letter referring to his sustaining of appeals in the two cases. Further, the General Counsel averred that it had decided, *sua sponte*, to revoke his prior denial in Case 7-CA-16527 and sustain the appeal therein. The General Counsel averred that such decision was in view of the evidence adduced in the investigation of Cases 7-CA-16680

[3] The facts are based on stipulations or admissions in the pleadings.

[4] Sec. 10(b) of the Act provides in part:

Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made . . .

[5] Counsel for the General Counsel avers in his brief that the General Counsel on May 16, 1980, sustained the Charging Party's appeal in both Cases 7-CA-16680 and 7-CA-17014. Said brief refers to Resp. Exh. 29 as the basis for such referred to evidence. I do not find a document setting forth such date of May 16, 1980. Perhaps, by inadvertence, the same has been left out of the original formal exhibit file. Excepting for the date of such action, a comparison of the complaints as issued and the other evidence as a whole would reveal no real issue on such contention.

and 17014, and of the conduct as alleged in Case 7-CA-16527.

Thereafter, a consolidated complaint alleging violations of Section 8(a)(1), (2), (3), and (5) of the Act was issued on June 20, 1980.

Respondent contends that only Case 7-CA-16527 is barred by Section 10(b) of the Act. In many respects, this issue may be said to be an exercise in academics. Thus, the charge in Case 7-CA-16527 concerned itself with conduct violative of Section 8(a)(5) and (1) of the Act. The charge in Case 7-CA-17014 concerned itself with conduct violative of Section 8(a)(1), (3), and (5) of the Act. The averred 8(a)(5) conduct set forth in the charge in Case 7-CA-16527 is essentially similar to some of the allegations as averred in Case 7-CA-17014. In the charge in Case 7-CA-16527, the commencement date of the averred refusal to bargain was set forth as "Since in and about May, 1979 . . . ." In the charge in Case 7-CA-17014, the commencement date of the averred refusal to bargain was set forth as "Since in or about June, 1979 . . . ."

The complaint allegations in the amended complaint avers the earliest conduct alleged to be violative of Section 8(a)(5) and (1) of the Act, as occurring, "Since on or about the last week of May."

Considering all of the foregoing, I am persuaded that all of the conduct alleged in the amended complaint is properly based upon the charge in Case 7-CA-17014. Thus, such charge was filed on November 1, 1979, and would support complaint allegations of conduct on or after May 1, 1979. It is clear that the alleged conduct of late May 1979 relating to the refusal-to-bargain issues is timely within the view of Section 10(b) of the Act. Thus, it would not appear necessary that the General Counsel use the charge in Case 7-CA-16527 as a basis for his complaint. However, the alleged conduct averred in Case 7-CA-16680 and 7-CA-17014 is closely related to the conduct alleged in Case 7-CA-16527 and, thus, it is clear that Respondent has been on notice of the issues under investigation in this case at all times since June 27, 1979. Therefore, the overall facts relating to the ultimate termination of employees in November 1979 warrant the reinstatement of the charge in Case 7-CA-16527.[6]

B. *Statements of Jordon—Affidavit and Oral*

The General Counsel's complaint alleges that Respondent discriminatorily discharged Elmer Jordon on or about August 6, 1979. On the second day of the hearing, July 17, 1980, the General Counsel (A. Bradley Howell) offered an affidavit of Elmer Jordon into the record as evidence. Howell stated, as counsel, that Jordon was deceased, that he (Howell) had personally taken the affidavit, and that Jordon had signed the same in his presence.

Further, statements of Howell were to the effect that Jordon had died around July 2, 1980; that Howell learned of Jordon's death on or around July 7, 1980; that Howell had advised one of Respondent's attorneys, Hyman, of Jordon's death, and that a copy of Jordon's affidavit had been mailed to Respondent's counsel on July 9, 1980.

Jordon's affidavit bears the date of oath as May 29, 1979. Respondent did not dispute Howell's statement of facts. However, Respondent disputed whether Jordon's affidavit as furnished counsel complied with Rule 804 of the Federal Rules of Civil Procedure. Thus, Respondent contended that the affidavit had not been expeditiously furnished nor was it complete. It is not disputed that a number of names had been deleted from the affidavit furnished Respondent prior to the hearing.

The affidavit of Jordon, dated May 29, 1979, was tentatively received into the record, and the parties were advised to brief the question of such admissibility. At such time said affidavit, unedited and with all names therein, was made available to Respondent's counsel, who was advised that he would be given time at that time or that he could have time at the end of the General Counsel's case in connection with preparation for the issues raised by the substance of the affidavit. At such time, Respondent's counsel elected to take such time at the end of the General Counsel's case. It appears that Respondent did not find it necessary to take time with respect to such issues at the end of the General Counsel's case.

The General Counsel in his brief alludes to Respondent's argument concerning Rule 804, appears to argue that Respondent's counsel was not prejudiced by failure to furnish a complete affidavit prior to the hearing, and argues that Board case law reveals that affidavits of deceased persons, even those with interests in the proceeding, are admissible.

Respondent argues that the affidavit is not admissible, that the requirements of Rule 804 for admissibility have not been made, that an affidavit of a deceased person having interest in the proceeding lacks inherent trustworthiness, that the affidavit was not timely furnished to Respondent, and that the affidavit as furnished to Respondent was not complete.

The Board has always been guided as to the receipt of evidence by Section 10(b) of the Act which provides in effect that its proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district court. In this regard the Board has found affidavits of deceased persons having an interest in the proceeding to be admissible as evidence.[7] The Board, however, has determined that statements of deceased persons should be considered with the utmost care and caution and closest scrutiny. The weight to be given such statements depends on consideration of the richness and fullness of detail and whether such details are corroborated or disputed and the resultant logical consistency of such statements with all other facts presented on the issues involved.

The Federal Rules of Evidence contain the following rules relevant to the issues presented concerning the receipt of Jordon's affidavit into evidence:

[6] *California Pacific Signs, Inc.*, 233 NLRB 450, 451 (1977).

[7] See *Prestige Bedding Company, Inc.*, 212 NLRB 690, 701, fn. 13 (1974); *Canterbury Gardens and Manchester Gardens, Inc.*, 238 NLRB 864, 868 (1978).

Rule 102. Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

* * * * *

Rule 804. Hearsay Exceptions: Declarant Unavailable

(a) *Definition of unavailability.*—"Unavailability as a witness" includes situations in which the declarant—

* * * * *

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or . . . .

(b) *Hearsay exceptions.*—The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

* * * * *

(5) Other exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Considering all of the foregoing, I am persuaded that the Board should adhere to the principles of Federal Rule 804 insofar as practicable and as consistent with its past decisions relating to the receipt of evidence.

Thus, I am persuaded that receipt or consideration of a statement, as to which the proposing party has not complied with the requirement of furnishing a copy of said statement to the adverse party sufficiently in advance of the hearing, is dependent on discretion requiring consideration of all of the circumstances. In the instant case, it appears that the General Counsel furnished the affidavit, with certain names deleted, to his opponent within a reasonable time considering the timing of the events. There is no indication that Respondent, on receipt of the "affidavit," found it necessary to ask that the hearing as scheduled be postponed. I am persuaded that the better policy for the General Counsel would have been to furnish the affidavit without deletion of names, well before the time of the hearing, that, if the affidavit were needed as evidence, such need outweighed any internal policy relating to confidentiality. I note that it is standard practice, at the hearing and upon request after a witness has testified, to furnish unedited affidavits of said witnesses to counsel. The trier of fact in his discretion might refuse to receive such proposed affidavit if to do so under all the circumstances would be unfair to respondent or an abuse of the hearing process. In the instant case, however, Respondent's counsel was advised that time would be given him to prepare concerning the affidavit. Thus, the timing of the furnishing of the affidavit to Respondent and the presentation of an edited affidavit at such time do not constitute an impairment to the receipt of the affidavit in evidence.

As to the question of whether an affidavit by a deceased person who has an interest in the proceeding has guarantees of trustworthiness, Board case law reveals that the affidavit is admissible but subject to careful and cautious consideration and to close scrutiny with the weight to be given subject to consideration of all of the circumstances and facts. Accordingly, I reaffirm the ruling wherein the affidavit of Jordon was received into the record.

The General Counsel further attempted to present testimony of Calloway as to statements made by Jordon to Calloway concerning the events surrounding his discharge. Such testimony was objected to and rejected. It is clear that the General Counsel did not advise Respondent prior to the hearing that he intended to introduce evidence through Calloway of statements by Jordon. Normally, such evidence would be inadmissible because of its hearsay characteristics. In the instant case, the principles of Federal Rule 804 has not been followed or practically applied. I reaffirm the ruling rejecting such testimony.

C. *Supervisory Status*[8]

At all times material herein, except as limited by indication, the following named persons occupied the positions set forth opposite their respective names, and have been and are now supervisors of Respondent at its Scott Street plant, within the meaning of Section 2(11) of the Act, and its agents: Marcus Rohtbart—owner; James Richardson—plant manager; Benjamin Govaere—supervisor; Lawrence Selig—supervisor until July 1, 1979, thereafter Michael Mislevy—supervisor; Matthew Guilfoyle[9]—boning room supervisor.

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[8] The facts are based on the pleadings and admissions therein, and on stipulations. The General Counsel further contends and Respondent denies that Lawrence Selig's supervisory status commenced in the beginning of June 1979. It suffices to say that the evidence is not sufficient to establish that fact. Under the facts of this case as later found out, this appears to have little significance.

[9] The motion to amend the complaint to include Guilfoyle as a supervisor as indicated on the record sets forth the name "Matt Gilford." Witness Matthew Guilfoyle testified in this proceeding. The names sound similar. Under the circumstances I am persuaded that the correct name of the supervisor referred to is Matthew Guilfoyle.

D. *Background*

From in or about 1972 and through November 22, 1979, Amalgamated Meat Cutters and Butcher Workmen of North America, Local 26, AFL-CIO, or United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, and Eastern Market Beef Processing Corporation had a collective-bargaining relationship and had collective-bargaining agreements, the last of which was effective from November 22, 1976, until November 22, 1979.

The last collective-bargaining agreement and perhaps earlier ones were agreements negotiated when Eastern Market Beef Processing Corporation bargained as part of the Detroit Meat Packers Association. Said agreement spelled out the covered appropriate bargaining unit as follows:

> All employees who are engaged in janitorial, receiving, boning, breaking, cutting, grinding, slicing, curing, preparing, processing, sealing, wrapping, bagging, prefabricating, of all meat products, sausage, poultry, fish and sea food products, whether such products are fresh, frozen, chilled, cooked, cured, smoked or barbecued, including those employees operating equipment used in wrapping, cubing, tenderizing of such meat products and who perform those duties in all areas where such products are prepared. All services as indicated above performed in the plant shall be performed by employees covered by this agreement.

The General Counsel alleges, and Respondent denies, in effect that the above-described appropriate bargaining unit of employees employed by Respondent at its facility located at 1545 Alfred Street, Detroit, Michigan, but excluding office clerical employees, guards and supervisors as defined in the Act, constitutes an appropriate bargaining unit within the meaning of the Act.

Respondent's counsel indicated an understanding that cleanup janitorial employees were not in the unit. Apparently in support of such contention, Respondent presented into evidence memorandum agreements relating to janitorial service employees and "night cleanup" employees. I would note, however, the 1976-79 contract was executed on December 15, 1977, and appears to have absorbed earlier agreements as indicated in such memorandum.

I note that the facts reveal that Respondent, prior to March 1979, had two plants, one on Alfred Street and the other on Adelaide Street. The plant on Adelaide Street apparently closed around March 1979, and its employees were transferred to the Alfred Street plant. Further, the union steward for the Adelaide plant became the union steward at the Alfred Street plant when the old steward left. Thus, it appears that Respondent's 1976-79 collective-bargaining agreement covered employees at both the Alfred and Adelaide Street plant until March 1979 and thereafter covered the employees at the Alfred Street plant. Further, it appears that, whether or not janitorial employees of Respondent were covered or in the bargaining unit prior to 1975 and 1976, such employees were included in the bargaining unit during the time of the before-referred-to 1976-79 collective-bargaining agreement. The sum of all of the facts establishes, and I conclude and find, that the bargaining unit as set forth above with respect to Respondent's employees at the Alfred Street plant and/or the Scott Street plant constitutes an appropriate collective-bargaining unit.

E. *Bargaining and the New Plant—Scott Street Plant*

In January 1979, Rohtbart, president of Respondent, discussed with his attorney the fact that Respondent was doing some subcontracting of work. It appears that at such time Rohtbart was contemplating and exploring the possibility of subcontracting agreements and was also involved in the planning of acquisition of new plant facilities and "changes" in operations, including changes in methods of payment for labor services. Respondent's attorney informed Rohtbart that he needed to notify the Union about his subcontracting of work.

Rohtbart, after exploring the idea of subcontracting, apparently decided not to enter into any extensive agreement with anyone for the subcontracting of work. Excepting for the foregoing reference to subcontracting, later events do not involve the question of *true subcontracting*. It appears from all of the evidence, and I draw such inference, that Respondent considered that it had the same obligation of notifying and bargaining with the Union about the relocation of its Alfred Street plant to Scott Street and about changes in operations and wage plans. In such regard, terminology of "subcontracting" appears to have been used with reference to said relocation and changes in operations or as a result of confusion otherwise.

Thus, in January 1979, Respondent was in the midst of arrangements to acquire a plant at Scott Street and of plans for the relocation of its Alfred Street plant.[10] Armstrong, business agent for Local 26, informed Seely, business representative for Local 26, that Respondent Plant Manager Richardson desired a meeting to discuss contracts and the procedure for moving the Alfred Street plant to the Scott Street facility.

Following the foregoing, Seely had a meeting with Richardson in the latter part of January 1979. What occurred is revealed by the following credited excerpts from Seely's testimony:

> Q. (By Mr. Howell) Where did the meeting take place?
>
> A. In the union office.
>
> Q. Who was present at this meeting?
>
> A. Mr. Jack—Maynard Jack Armstrong, Jim Richardson, and myself.
>
> Q. What time of day did that occur?
>
> A. In the morning.
>
> Q. What was said and by whom at this meeting?
>
> A. Mr. Richardson explained to me that the company had acquired the Scott Street facility and was intending to move very shortly into the Scott Street facility. That the Alfred Street facility would be closed, that the company was desirous of entering

[10] This finding is based on a consideration of all of the facts and logical inferences therefrom.

into a new collective bargaining agreement, which would be patterned after the Western—and I am putting that in quotes—"The Western Type Beef Packers" and that also the company was desirous of having a contract also comparable to the Western Beef Packers. Mr. Richardson further showed me a list of grades or classifications with pay rates describing the work content of the new radical type operation. He described it as a new on-the-rail beef boning operation.

* * * * *

All right. I said, "Do you want rates comparable to the Western Beef Packers also? He said, "Yes." I said, "You have your beef boners on an incentive plan at the Alfred Street facility. What happens to the incentive plan? He said, "There will be no incentive plan at the new operation." And I said, "Jim, you've got to be kidding. You're talking about cutting people's wages."

Later, on or about February 9, 1979, Richardson continued Respondent's approach to Local 26 concerning its desired changes by sending a letter to Maynard Armstrong which set forth reference to further discussion of proposed changes as follows:[11]

Re: Current Status of Eastern Market Beef

Dear Mr. Armstrong:

As I am sure you are quite well aware, the small independent beef packers in the State of Michigan, and especially the City of Detroit, have experienced many problems of a financial nature in the last year. Several independent meat packers in the City of Detroit have been forced to close their facilities because they were unable to cope with the economic reality of meat packing in today's economy. Management has been actively engaged in studying the methods and procedures regarding the operation of a plant facility that are currently being used by independent meat packers in the western portion of the United States. It is our opinion that we can no longer continue to operate Eastern Market Beef as it is currently known to the union. There have been many innovations in the past couple of years that enable a packer to run its operations in a more effective, efficient, and competitive nature. As I am quite sure you know, the competition has become fierce in this industry.

The union and the employer must work together to effectuate the changes that must be made in the current operations of Eastern Market Beef to enable it to remain a viable entity. We have no intention to displace any union employees. Our only goal is a reorganization that would enable us to be competitive in the marketplace. We intend to make some changes in areas that are not specifically covered under the current collective bargaining agreement. For this reason, we think it is proper at this time to invite you to contact us so we may arrange a mutually agreeable time to meet and discuss the future of Eastern Market Beef. Please bear in mind that these changes are essential to prevent Eastern Market Beef from going the same way as the following: Rem Packing Company, Prime Meat, Ray's Beef, Standard Beef, and Snow Beef.

We are looking for your response in the very near future.

At some point of time in February 1979, Plant Manager Richardson and Local 26's chief steward, Peter C. Kitka III, engaged in a discussion concerning a grievance. During the time of such discussion, Kitka questioned Richardson as to whether Respondent had purchased the "Wolverine" plant on Scott Street. Richardson told Kitka that Respondent had purchased the Wolverine plant, that the operations at such plant would involve a different type of procedure for "boning," that there would be no need for artisan boning, and that this was the way "they do it out west and that is our competition. That's the way it is."

Later, around March 4, 1979, Respondent held meetings with chosen employee groups. At one of such meetings at least, Richardson showed the Alfred Street employees blueprints of the "Scott Street Plant," told the employees that they would be working there, and spoke concerning the proposed Scott Street plant as is revealed by the following excerpts from Kitka's credited testimony:

Q. What was said and by whom in that meeting?

A. Well, Jim was up there and he had the blueprints of the Scott Street plant.

Q. Did you examine those blueprints?

A. Oh, yes.

Q. What did they show?

A. Well, it had the whole floor plan of the whole Scott Street plant, showing the meat as it would come in. How they would bring it in off the trucks and how they would send it along the rails to different spots in the plant to be boned out and processed.

* * * * *

He started the meeting by saying, "You'll be working there. We will not have any need for any artisan boning or any skilled jobs." He also said that he did not care what kind of seniority we had, plant or departmental seniority. He said that that would be a different procedure altogether. Our competition is out west and that's what we're against. And he also said that March 15 was a deadline for signing the mortgage for the loan for plant and in 60 days after that we would move in. He also wanted the expiration date of our contract to be moved up to July 1. When he was asked about wages, he would say that we would have to negotiate that with the union.

[11] In the meantime, Local 26 had apparently taken no steps to comply with Respondent's request for discussions. It should be noted that, where there is a collective-bargaining agreement, changes therein cannot be made unilaterally even if there occurs bargaining to an impasse.

One of the other employees asked him about new machinery in the plant, and he said that during the upcoming months they would be taking a line out of Plant 2 and a line out of Plant 1 and moving them over there, both the roll-omatic machines and other machines that would be used.

He also said, if I can recall, that to remain solvent we would need, you know, a loan. He wanted our contract moved up. I've already said that, sorry. Right now, that is all I can recall.

At some point of time in March 1979, Respondent convened around 30 employees for a meeting in President Rohtbart's office. At such meeting were Plant Manager Richardson and President Rohtbart. During such meeting, a movie was shown the employees. What occurred is revealed by the following credited excerpts from David Dziepak:

Q. What was the movie about that he showed?

A. Mr. Richardson and Mr. Rohtbart explained that the movie was taken on a trip out West. And the movie depicted meat cutting operations in a plant out West. And the description of the movie was showing how beef was cut out West on the rail, and Mr. Richardson and Mr. Rohtbart explained that the way this meat was cut out West was a more efficient way of cutting it than the way we were cutting it at the Alfred Street plant.

Q. Okay. Was anything else said at this meeting?

A. Mr. Richardson and Mr. Rohtbart, I am not sure which one, said the general explanation, but they said this was a more efficient—boning on the rail, which is the way they bone it out West, was a more efficient way of boning it than the way we did at Scott Street, on the table.

Q. Scott Street or Alfred Street.

A. Alfred Street. At Alfred Street we were boning the meat on the table. And Mr. Richardson explained that they were planning on going to the more efficient way of boning meat, which would be on the rail.

At some point of time in March 1979, Local 26 received a petition from employees at the Alfred Street plant. Said petition requested Local 26 to enter into immediate negotiations with Eastern Market Beef for the purpose of negotiating a new contract. Seely, for Local 26, convened a union meeting to discuss the referred-to petition. What occurred is revealed by the following credited excerpts from Seely's testimony:

Q. What occurred at this meeting?

A. I presented the petition that had been given to the union and opened the floor immediately to questions as to what had precipitated their drawing up and signing a petition, reminding them that they had a contract in effect and they were being well taken care of and that their contract would continue until November 1979.

Following the above-referred-to union meeting, Seely had a telephone conversation with Plant Manager Richardson. What occurred is revealed by the following credited excerpts from Seely's testimony:

Q. Who called who?

A. Mr. Richardson called me.

Q. What did he say and what did you say?

A. He demanded to know who and why the union could act contrary to a petition that had been signed by the majority of the employees of Eastern Market Beef, and which the employees had demanded that Local 26 enter into contract negotiations. I responded that the petition had no weight because a local union had a contract with the company that ran to November of 1979.

Q. Was anything else said during this conversation?

A. I am trying to remember.

Q. Was anything said regarding the multiemployer group?

A. Yes that was the other part. This was also explained at the membership meeting, that there were some legal and or technical—

Q. Who is doing the explaining?

A. I am.

Q. What did you say?

A. That there were some legal or technical questions that barred Local 26 from terminating the contract with Eastern Market Beef because Eastern Market Beef were members, or a member of a multiemployer group that were signatory parties to the current collective bargaining agreement and that if we were desirous of terminating that contract the union would have to obtain approval from all the other signatory. This I considered at that time to be impossible.

On March 23, 1979, Respondent completed the purchase of the Wolverine plant facilities at Scott Street.

On or about April 15, 1979, President Rohtbart telephoned Seely. What occurred is revealed by the following credited excerpts from Seely's testimony:

Q. And who called who?

A. Mr. Marcus Rohtbart called me at approximately 4:00 o'clock in the afternoon.

Q. What did he say and what did you say?

A. He said to me, "Harold, we have to have a new contract." And I said, "Marcus, what's the hurry? You've got a contract that runs until November." I said, "We're covered. There's no problem." And he said, "No, I am having trouble with the bank. We had a lot of money involved and we have loans and the bank has to have some assurances before we can move over there to the Scott Street operation that we have to have a contract in effect." And I said, "Marcus, it is late in the day. Maybe I can make it tomorrow or possibly next week." Mr. Rohtbart said to me, "No, I am leaving town. You have to come over right now."

Following the above-referred-to conversation, Seely left his office and went to Respondent's office and met

with President Rohtbart, Richardson, and Respondent's attorney, Hyman. What occurred is revealed by the following credited excerpts from Seely's testimony:

> Q. And what was said and by whom?
>
> A. Well Mr. Rohtbart again impressed or attempted to impress me with the fact that they had to negotiate a new agreement before they moved to Scott Street, that it was imperative and again, in his words, that they have a contract in effect when they made the move. One of the main—the primary purpose, as he explained to me, was that he had no intention of moving over to the new facility and then having to enter into negotiations and face a possible strike in November of 1979. I said that that made sense to me. I said, "So your only purpose in early negotiations are negotiating a new contract was to establish labor peace for operation in a new facility." And, he assured me that that was the only reason.
>
> Q. Was anything else said?
>
> A. Yes. I said, "As long as you have told me what your position is, I will tell you what our fears are." I said, "There has been talk in an membership meeting that I got from the membership that the company had planned to discontinue their participation in the various trust funds; pension, health and welfare, dental, optical, and prescription drug funds. So, there is a fear on the part of the union and the employees that the company intends to withdraw their participation from those funds." At that point, Mr. Rohtbart said, "Well, what can we do to assure you that we will not withdraw from the funds or hurt the employees?" And, I gave him some examples of what could happen. And, he said, "Well, I don't want to hurt the employees. What do you need?" I said, "I will need a written commitment from the company that the company will not withdraw from the funds, thereby protecting the employees interest." He looked around to Mr. Hyman and he said, "Can we do that?" And, Mr. Hyman assured him that we could. He then directed Mr. Hyman to draw up such a letter and present it to the union. And, I said, "When we get that letter, we can begin negotiations."

On Monday, April 2, 1979, Eastern Market Beef Processing Corporation held a special meeting of its board of directors. What occurred is revealed by the following excerpts of the minutes of said meeting:

> A Special Meeting of the Board of Directors was held at the office of the Company on Monday, April 2, 1979. All Directors were present.
>
> A discussion was had regarding the affairs of the Company. The Company has acquired a new plant located at 1825 Scott Street, Detroit, Michigan. The Company will be required to purchase equipment and remodel said plant. The operations to be conducted at said plant are different from the operations presently conducted by Company at its plant at 1545 Alfred Street, Detroit, Michigan.
>
> Upon motion duly made, seconded and carried, it was unanimously
>
> RESOLVED, That Company hereby establishes two divisions to be known as the Scott Street Division and the Alfred Street Division.
>
> FURTHER RESOLVED, That the business of the Scott Street Division shall be conducted at 1825 Scott Street, Detroit, Michigan, and the business of the Alfred Street Division shall be conducted at 1545 Alfred Street, Detroit, Michigan.
>
> FURTHER RESOLVED, That separate bank accounts and separate books and records shall be maintained for each Division.
>
> FURTHER RESOLVED, That transfers of merchandise from one Division to another Division shall be invoiced and billed by the transferor Division and paid by check by the transferee Division.
>
> FURTHER RESOLVED, that each Division shall be maintained as a separate profit center.

On or about April 17, 1979, Plant Manager Richardson transmitted a letter to Seely. In said letter, Respondent gave the requested assurances as is revealed by the following excerpts from said letter:

> Management at Eastern Market Beef offers this letter to the union in order to show our good faith and to maintain labor peace.
>
> On February 9, 1979, a letter was sent to Mr. Armstrong inviting the union negotiating committee to meet with management and discuss the possibilities of subcontracting. We are anxious to resolve this matter with the present union and the present work force.
>
> Eastern Market Beef does not intend to revoke any of the benefits, embodied in the current Collective Bargaining Agreement dated November 22, 1979, that are presently being enjoyed by employees.

Following the receipt of Richardson's April 17, 1979, letter, Seely set up a meeting to elect a bargaining committee and to obtain proposals for demands to use in negotiation on a new contract. There is nothing in the record to indicate the exact date of such scheduled meeting.

On or around May 1, 1979, Seely received information from the Union's chief shop steward that Respondent had posted a copy of a letter from Attorney Hyman to Armstrong.[12] Later that day, a copy of the referred-to letter was hand-delivered to the Union's office. Such letter was as follows:

[12] Exactly what was said by the union chief shop steward to Seely is not revealed in more detail.

May 1, 1979

Mr. Maynard Armstrong
Amalgamated Meat Cutters and
Butcher Workmen of North America
Local Union 26
211 Woodward Ave., Room 408
Detroit, MI 48201

Re: Potential Subcontracting at Eastern Market Beef

Dear Mr. Armstrong:

In both our letters of February 9, 1979 and April 16, 1979, the employer, Eastern Market Beef, has expressed the urgency of meeting with the bargaining committee to discuss the potential effects of subcontracting on bargaining unit members. I have met with you at the plant and discussed this on one occasion.

As our letter of April 16, 1979 indicates, we do not intend to revoke any of the benefits embodied in the current collective bargaining agreement. I do not know what further we could have done to express the urgency of meeting with the bargaining committee and discussing these matters.

Still you have failed to heed our request to come to the table and negotiate. It is unfortunate for both the employer and the union that you have not done so. We are at a point in time where we are forced to negotiate with subcontractors. We intend to be negotiating with subcontractors during the month of May. Your failure to respond to our repeated requests has left us no other alternative.

/s/ Douglas A. Hyman
Douglas A. Hyman, Attorney
for Eastern Market Beef

DAH/pap

Following the receipt of the above letter, Seely telephoned Richardson. What occurred is revealed by the following credited excerpts from Seely's testimony:

> Q. What was said during the conversation?
>
> A. Okay I then called Mr. Richardson and explained to him that the letter obviously was not intended for the union but was intended for the employees. I said that I did not appreciate the company posting a letter that was addressed to the union, posting it for the employees' intimidation before we had a chance to look at it. Further, I said to Mr. Richardson, I said, "Look, the company is telling us that they want to negotiate and then your hanging this sub-contracting thing over our head." I said, "You go ahead and talk to the sub-contracts first. And when you get through with them we will sit down and talk with you." And then Mr. Richardson said, "Look, we don't want to talk to any subcontractor. Let's just get started negotiating a contract so we can move."
>
> Q. Was anything else said?
>
> A. I think it was at that point that I told him that I had scheduled a meeting for the purpose of electing a bargaining committee and drawing up a proposal and I said that as soon as I was done he would get a copy of the proposals and we could begin.

Thereafter, Local 26 prepared proposals for negotiations. On May 14, 1979, Local 26 met with certain Respondent officials to discuss the oncoming negotiations. At such time, Local 26 presented certain proposals. Attending for Respondent were David Rohtbart, son of President Rohtbart, and Plant Manager Richardson. Attending for Local 26 were Seely, Chief Steward Kitka, Pat Hardy, Dave Dziepak, and apparently six other members. What occurred in effect is revealed by the following credited excerpts from Seely's testimony:

> Q. (By Mr. Howell) What was discussed at this first preliminary meeting?
>
> A. At the preliminary meeting most of the discussion was centered around the urgency on the company's part.
>
> Q. Who was doing the talking?
>
> A. Mr. Richardson. The urgency of reaching an agreement so that the move could be made to the new facility, the company further said—
>
> * * * * *
>
> Mr. Richardson again. That Mr. Rohtbart senior and he had decided that a target date should be picked at which time an agreement should be reached. Must be reached. And if no agreement were reached by that date that the company would start sub-contracting the work.
>
> Q. Was anything else said?
>
> A. Well, I at that point, explored with Mr. Richardson about what he specifically meant by subcontracting. Because I was of the opinion or the feeling that sub-contracting as I have known it in the past was not being applied here in the interpretation of Mr. Richardson. So, I asked him to explain what he meant by sub-contracting. And, he told me that, "Our plan is to set up a satellite company in the new facility at Scott Street and have them do the work that is presently being done by the Alfred Street operation."

The first real bargaining session occurred on May 16, 1979. Later, on May 22, 1979, Richardson transmitted a letter to Seely which stated: "This is to clarify and inform you that Eastern Market Beef Processing Corp. will be negotiating its new contract by itself and on its own, apart from the Detroit Meat Wholesalers Assoc." Following this, there were around seven bargaining sessions with the last bargaining session occurring on June 7, 1979. It appears that the parties had reached agreement on all items for a new contract excepting the parties could not reach agreement on certain cost-of-living provision language.

The respective positions of the parties were as revealed by the following credited excerpts from Seely's testimony:

> Q. What was the union's position?

A. The union's position was we had proposed a semiannual cost of living adjustment which would have allowed full adjustment of cost of living without regard to maximums. The company's position was that there would be a continuation of the cost of living formula in the old contract which provided for a ten cent cap every six months.

What occurred with respect to the disagreement on the cost-of-living language in the proposal and the proposal as a whole is revealed by the following credited excerpts from Seely's testimony:

Q. What occurred at this June 7th, 1979 bargaining session?

A. Well when we reached a point where we could not agree on the cost of living language, the company then requested that the union take the offer to the employees, to the membership, for a vote. And requested also that the union—first ask the union if we would recommend it for acceptance. We said that we would not. The company had requested, or asked if we would take the package to the members with no recommendation. And, we agreed that we would.

Thereafter on June 12, 1979, Local 26 held a ratification vote for the contract proposals. These were rejected by the Union's membership.

On June 13, 1979, Seely telephoned Richardson and related the results of the vote by the membership. What occurred is revealed by the following credited excerpts from Seely's testimony:

Q. What did he say and what did you say?

A. Well it was the following morning and I was reporting to him the results of the vote that had been taken. I would like to point out that was a secret ballot vote. I explained to Mr. Richardson that the final proposal of the company had been rejected by a vote of 76 to 6 and that we were interested in getting back to the bargaining table. Mr. Richardson asked me if Mr. Shapiro was back in town and I said that he was not yet back and, he said, "Well have Mr. Shapiro call me as soon as he gets back and we will get back together again."

In the meantime certain employees had been hired by Respondent to engage in cleanup work at the facility it had purchased on Scott Street. On June 16, 1979, Respondent assigned production jobs at the Scott Street facility. On the same day Respondent recognized the Industrial, Technical, and Professional employees, a Division of National Maritime Union, AFL-CIO, as the exclusive collective-bargaining agent for its Scott Street plant employees. On June 17, 1979, Respondent executed a collective-bargaining agreement with NMU. The bargaining unit covered by such contract is as follows:

All production and maintenance employees employed by the Respondent at its plant located at 1825 Scott Street, Detroit, Michigan; but excluding office employees, employees of independent contractors, sales personnel, professional employees, and guards and supervisors as defined in the National Labor Relations Act.

During the week preceding June 17, 1979, Howard Shapiro, Local 26's business agent, was in Washington, D.C., in connection with the merger which changed Local 26 from being Amalgamated Meat Cutters and Butcher Workmen of North America, Local 26, AFL-CIO, to United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC. Shapiro returned to Detroit on the night of June 17, 1979. During the week following, Shapiro telephoned Plant Manager Richardson's office on Monday, Tuesday, and Wednesday (June 18, 19, and 20, 1979). On such occasions, the person who took Shapiro's call informed him that Richardson was not available.[13] Said person, however, took Shapiro's name and telephone number and told him that Richardson would return his telephone call.

On June 21, 1979, Shapiro transmitted the following letter to Respondent:

As you are aware, at the urgent behest of the Company, we have been in negotiations with you for more than a month, despite the fact that our current agreement is not due to expire until November of this year.

We responded to the urgency of your request because of your representation that it was necessary to finalize a new agreement preparatory to moving into a new plant which would necessitate a revolutionary change in your methods of operation.

During this one month period we have attempted in all good faith to arrive at a new, mutually acceptable agreement. However, as you know, the most recent proposal by the Company was voted down in a secret ballot vote by an overwhelming majority.

I have since that time requested that we resume negotiations in an attempt to resolve the outstanding issues. You have failed to set a date for this purpose, and phone calls I have made to you have found you unavailable and were not returned.

Additionally, you have begun operations in the new plant, hiring approximately 30 new employees who will be performing the same work covered by our existing and un-expired [sic] Collective Bargaining Agreement.

It appears to me that you have provoked serious doubts about the good faith bargaining required by law and implemented over many years in the relationship between your Company and the Union.

We hereby assert that the so-called new plant is an integral part of the operation of the Eastern Market Beef Company and demand that the new employees hired by you receive all the wages and conditions provided for in our Collective Bargaining Agreement.

[13] Shapiro in his testimony revealed that the person who took his telephone calls was a female. Shapiro described her as the operator who took his telephone calls.

> Should you fail to do so, the Union will be compelled to utilize its full resources under law to assure compliance with the contract and the full protection of the wages, conditions and seniority of your employees.
>
> We do not seek a confrontation with your Company. We much prefer to resolve things peaceably and maintain and strengthen a decent relationship which has existed over the years.
>
> It is my sincere hope that you feel the same way.
>
> May I expect to hear from you soon.
>
> Very truly yours,
> /s/ Harold L. Shapiro
> Harold L. Shapiro
> Deputy Trustee
>
> HLS:is
> cc: Ted Sachs
> Charles A. Hayes
> I. Mark Steckloff, with enclosure

On June 26, 1979, Plant Manager Richardson transmitted a reply to Shapiro's June 21, 1979, letter, as is revealed by the following:

> Thank you for your June 21, 1979 letter. As I am sure you are aware, I was unable to meet last week because Markus was out for several days and I was extremely busy for reasons I am sure you well understand.
>
> When we made our last offer to you, it was my fondest hope that the union would recommend it to the employees and that the employees would approve it. Unfortunately, our best offer was rejected by an overwhelming majority.
>
> To remove any possible doubt in your mind, it is our current intention to continue to operate the Alfred Street facility.
>
> We reject the other assertions set forth in your June 21, 1979 letter.
>
> If after reviewing the above you still desire to meet, please give me a call and we can set up a meeting this week.

On the next day, Local 26 filed an unfair labor practice charge which was docketed as Case 7-CA-16527. Such charge alleged in effect that Respondent "Since in or about May, 1979," had refused to bargain in good faith by repudiating the collective-bargaining agreement in existence between Respondent and Local 26 and entered into on December 15, 1977, and effective November 22, 1976, to and including November 22, 1979. Such conduct was alleged to be violative of Section 8(a)(5) and (1) of the Act.

Around July 23, 1979, an agent or agents for Local 26 commenced monitoring activities at Respondent's Scott Street plant, and commenced organizational efforts directed at Respondent's Scott Street plant employees. On August 2, 1979, the Regional Director issued a letter advising the parties that he was refusing to issue a complaint in Case 7-CA-16527.

Among the employees who worked at the Scott Street plant and who engaged in some union activity toward the end of July and first part of August were employees J. C. Bonner and Elmer Jordon. On or about August 1, 1979, Respondent discharged J. C. Bonner. On or about August 6, 1979, Respondent discharged Elmer Jordon. On August 7, 1979, Local 26 filed unfair labor practice charges against Respondent. Such charges, docketed as Case 7-CA-16680, allege in effect that Respondent had discriminatorily discharged Bonner and Jordon because of their activities on behalf of the Union. Such conduct is alleged to constitute conduct violative of Section 8(a)(3) and (1) of the Act. Following this, on August 21, 1979, Local 26 took an appeal to the General Counsel from the Regional Director's August 2, 1979, refusal to issue a complaint in Case 7-CA-16527. On the same day, August 21, 1979, Local 26 filed an amended charge in Case 7-CA-16680, alleging in effect that Respondent had assisted and recognized NMU improperly and in violation of Section 8(a)(1) and (2) of the Act.

On September 6, 1979, Kearis, president of Local 26, transmitted a letter to Respondent Plant Manager Richardson. Said letter in effect notified Respondent of Local 26's desire to negotiate changes in the existing collective-bargaining agreement between the parties. At the same time Local 26 gave notice to the Federal Mediation and Conciliation Service of the proposed modification of the existing contract.

On September 28, 1979, the Regional Director issued a complaint in Case 7-CA-16680. Such complaint alleges conduct violative of Section 8(a)(3), (2), and (1) of the Act. At the same time the Regional Director refused to issue complaint in the broadest scope of Section 8(a)(2) of the Act.

On or about October 1, 1979, Business Representative Seely spoke to Plant Manager Richardson concerning negotiations and whether Respondent intended to negotiate as part of the multiemployer group or intended to negotiate on an individual basis. Richardson indicated to Seely that Hyman would handle the negotiations from that point on. On October 1, 1979, Seely transmitted a letter to Attorney Hyman and requested a response as to whether Respondent intended to bargain individually or as a group. Said letter indicated that enclosed with such letter were proposals for the new collective-bargaining agreement. Thereafter, on October 4, 1979, Hyman, by letter, indicated receipt of Seely's October 1, 1979, letter, advised that Respondent intended to negotiate on an individual basis, and informed Seely to feel free to contact him at his office.

On October 9, 1979, the General Counsel denied the Charging Party's appeal from the Regional Director's refusal to issue a complaint in Case 7-CA-16527.[14] On October 10, 1979, the Charging Party appealed the Regional Director's refusal to issue complaint in Case 7-CA-

[14] As noted previously, the charge therein alleged conduct violative of Sec. 8(a)(5) and (1) of the Act and referred to an alleged repudiation of the collective-bargaining agreement.

16680 in certain aspects with regard to alleged conduct violative of Section 8(a)(1) and (2) of the Act.[15]

On or about October 23, 1979, Hyman, for Respondent, transmitted the following letter to Seely for Local 26.

> I am writing this letter to inquire when and if you intend on negotiating with Eastern Market Beef on the Alfred Street plant. I have discussed this matter with you on several occasions and you have informed me that you would get back to me.
>
> I received your cover letter dated October 1, 1979 in which you inquired as to whether we would be bargaining as a group or individually. On October 4, 1979, I answered with my letter informing you that we intended to negotiate individually. Since that date, I have heard nothing further from you regarding these negotiations.
>
> Please be put on notice that the employer is, and has at all times, been ready, willing, and able to negotiate on the Alfred Street facility. Please contact me so that we may arrange to negotiate at times mutually agreeable to both parties.

On or about October 23, 1979, James Williams III, for the USDA, gave Plant Manager Richardson a memorandum dated October 23, 1979. Such memorandum referred apparently to a prior inspection date of July 23, 1979, of various "projects" of correction which had been due to start on 8-15-79 and due to have been completed by 9-15-79, and due to start on 9-12-79 and to be completed by 10-12-79. Further, such memorandum indicated that Williams had to have from Respondent the dates when corrective action would be taken and completed. Such memorandum indicated that, if this were not done, the areas mentioned would have to be "rejected."[16]

Sometime after Seely received Hyman's October 23, 1979, letter, Respondent and the Union agreed to have a bargaining session on October 29, 1979. Considering the timing of events, I find it reasonable to infer that the agreement to have a bargaining session on October 29, 1979, occurred after Respondent had received Williams' October 23, 1979, memorandum.

In the meantime, on March 23, 1979, when Respondent purchased the "Scott Street plant," Respondent entered into certain financial arrangements with the Michigan National Bank of Detroit as is revealed by excerpts from a summary of transactions in evidence as an exhibit. Such excerpts are as follows:

> SUMMARY OF TRANSACTIONS
>
> On March 23, 1979, EMB purchased from Wolverine Packing Co. the plant and equipment located at 1825 Scott Street, Detroit, Michigan, for $1,500,000 cash. The purchase price was allocated as follows:
>
> | | |
> |---|---|
> | Land and Building | $841,720.00 |
> | Equipment | $658,280.00 |
>
> On the same day, EMB borrowed $1,500,000 from Michigan National Bank of Detroit. The promissory note evidencing said debt bears interest at 1/2 of 1% over prime and is payable in monthly installments beginning May 1, 1979, of $12,500 per month plus accrued interest. A balloon final payment of $312,500 plus accrued interest is due on April 1, 1987.
>
> On the same day, EMB entered into a loan agreement with MNB covering a $2,500,000 line of credit including obligations on outstanding letters of credit. The interest on the line of credit loan is prime. Letter of credit charges are 1/2 of 1% per annum. EMB agreed to maintain compensating balances with MNB of $600,000, of which $300,000 must be collected funds.
>
> Present and future obligations and debts of EMB to MNB are secured by a mortgage on the Scott Street real estate and by a security interest in all presently owned and hereafter acquired equipment, inventory, accounts, etc.
>
> The foregoing summary is a general outline only and the complete terms of the transactions are set forth in the documents attached.

At some point of time between March 1979 and October 22, 1979, Respondent's letter line of credit had been increased by the Michigan National Bank of Detroit to $4 million. In any event, on October 22, 1979, the Michigan National Bank of Detroit approved a "reapproval" of a $4 million letter line of credit and approved a $500,000 term loan to be added to the existing $1-1/2 term loan.

Around October 25, 1979, President Rohtbart spoke to Peter P. Miller of the Michigan National Bank of Detroit and told him that he needed $2 million as an additional loan. Miller told Rohtbart the bank had extended him loans in an amount as considered possible and that the bank was not willing to extend any higher loan.[17]

F. *The Closing of the Alfred Street Plant*

On October 29, 1979, Local 26 and Respondent met at the Union's offices as scheduled. What occurred is revealed by the following credited excerpts from Seely's testimony:

> Q. Who was present?
>
> A. Present was Pete Kitka, the chief steward, Dave Dziepak, committee man, Robert Walker, an executive board member of Local 26, who had been

[15] Although the timing of these events might suggest that the October 10, 1979, appeal was with knowledge of the General Counsel's October 9, 1979, action, I would find the evidence insufficient to so establish. If the October 9, 1979, action were by letter, it would not appear that the parties would be aware of the same by October 10, 1979. The parties may have been aware of such actions by telegrams, or by telephone communication. However, the facts do not so establish.

[16] The evidence does not reveal whether the October 23, 1979, memorandum from Williams occurred *before* or after Hyman had transmitted his letter of October 23, 1979, to Seely.

[17] I credit that the conversation took place. Rohtbart's testimony revealed that he was very knowledgeable about money, collateral, and other facts of business life. Considering all of the facts, I am not persuaded that Rohtbart seriously sought said loan. Rather, I am persuaded that Rohtbart sought to obtain the answer he expected and received the same.

working with me on negotiations. And for the employer were Mr. Hyman, and a man I believe whose name was Woods, his associate.

Q. Okay what was said and by whom?

A. The union had its proposals all drawn up and spread out in front of the union committee and was ready to commence negotiations on the set of proposals. Mr. Hyman sat down, reached into his briefcase, and brought out several copies of a letter which he passed—

* * * * *

Yes this is a letter that Mr. Hyman had delivered at the bargaining table.

The letter delivered to the Union and bargaining committee was as follows:

Dear Mr. Seeley & Bargaining Committee Members:

The employer, Eastern Market Beef Processing Corporation, regrets to inform you that we are here today to negotiate the closing of the Alfred Street Plant. The purpose of this negotiating session is to negotiate the closing of the plant and the effect of the closing on current employees at the Alfred Street facility.

Economic conditions have made it impossible to continue the operation of the Alfred Street facility. The conditions involve but are not limited to the following:

(A) Less credit availability.
(B) Higher interest costs.
(C) Tighter margins
(D) United States Department of Agriculture requirements for refurbishing the Alfred Street facility which must be met prior to licensing.

The employer has every intention of paying off accrued vacation time, accrued sick pay time, and with dealing with all pending grievances which remain unsettled as of the date of this agreement.

Respectfully yours,
/s/ Douglas A. Hyman
Douglas A. Hyman
Attorney for Eastern
Market Beef Processing
Corporation

After deliverance of the letter, what occurred is revealed by the following credited excerpts from Seely's testimony:

We read the letter. And I said, "Do you intend to keep operating at the Scott Street facility?" And, he said, "Yes." And, I said, "Will any of the Alfred Street employees be transferred over to the Scott Street facility?" And his answer was, "We are taking applications." And I said, "Are you going to recognize seniority at the Scott Street application of the Alfred Street employees?" He said, "No. We are taking applications." I said, "On those employees that you do hire will you recognize their Alfred Street seniority?" And, he said, "No." And, I said, "Do you really intend to put a 160 people out on the street just like that?" And, he shrugged, you know like tough.

MR. SYKES: I object, your honor, and move to—

THE WITNESS: That's what he did.

MR. SYKES: Your honor, I object and move to strike the witnesses—

THE WITNESS: I am testifying under oath, your honor.

MR. SYKES: —Characterization of that's tough.

JUDGE STONE: I will strike the words and impression like that's tough. If the witness is testifying that he in effect shrugged his shoulders, I will allow the record to still show that. Go ahead.

Q. (By Mr. Howell) Did he advise you of a date?

A. Yes he did.

Q. What did he say?

A. He told me that the plant would be closed at the expiration of the contract which was November 23rd.

After the October 29, 1979, meeting between Respondent and Local 26, the facts reveal a number of unfair labor practice charges and letters exchanged by the parties in such a manner that the same appeared similar to that of filing pleadings and motions.

On November 1, 1979, Local 26 filed an unfair labor practice charge against Respondent. In such charge, docketed as Case 7-CA-17014, Local 26 in effect reiterated its earlier charge in Case 7-CA-16527, added more detailed language relating to discrimination and transfer of work, and added a of refusal-to-bargain allegation concerning the closing of the Alfred Street plant. In sum, the charge alleged conduct violative of Section 8(a)(5), (3), and (1) of the Act.

On November 2, 1979, Hyman, attorney for Respondent, transmitted a letter to Seely which set forth the following relating to the meeting earlier held on October 29, 1979.[18]

Dear Mr. Seeley:

Please accept this letter as a follow up to our plant closing negotiations which took place on October 30, 1979 at your offices at 10:00 a.m. in the morning.

During that meeting, we explained to you we would be closing the Alfred Street facility and also discussed briefly, the reasons for closing. In that meeting, I informed you that the employer has every intention of negotiating the effects of plant closure on current employees at the Alfred Street facility. At that meeting, I informed you and your negotiating committee that we have every intention

[18] Said letter set forth that such meeting was held on October 30, 1979. The testimony revealed that such meeting was held on October 29, 1979. Whether such meeting was held on October 30 or on October 29, 1979, would not vary the effect of the meeting.

of paying off accrued sick time, accrued vacation time and with dealing with any and all pending grievances.

It is important that you contact me so that we may arrange a time and place to work out the final phases of the plant closure. I will be expecting to hear from you within the next week, as to an agreeable time and place to work out the figures and final dollar amounts that may be due to employees.

Following this November 2, 1979, letter was a letter dated November 8 and a letter dated November 12, 1979. The sum effect of such letters reveals an effort to have the Union negotiate concerning the effects of the closing of the Alfred Street plant.[19]

At some point of time, apparently around November 12, 1979, Local 26 filed a grievance concerning Respondent's decision to close the Alfred Street plant.

On November 16, 1979, Attorneys Kruszewski and Steckloff, for Local 26, transmitted a letter to Plant Manager Richardson with copies of the same apparently transmitted to Local 26, Howell (of Region 7 of the National Labor Relations Board), and to Douglas Hyman (attorney for Respondent). Said letter set forth a contention that Respondent had been under an obligation to bargain with Local 26 about the decision to close the Alfred Street facility, demanded that Respondent fulfill such obligation before carrying out its intention to close, demanded transfer rights to the Scott Street facility for the Alfred Street employees, requested certain specific information relating to Respondent's decision and actions, demanded an audit of Respondent's books, and demanded that negotiations resume.

On or around November 20, 1979, Respondent's attorney, Hyman, responded to the foregoing letter by transmittal of a telegram and a letter. The telegram was transmitted to Seely and Shapiro of Local 26, referred to Kruszewski's letter of November 16, and indicated that Hyman was waiting for Local 26 to contact him with dates "to negotiate the decision to close and to negotiate the effect of closure if it does take place." The letter was transmitted to Kruszewski with copy thereof to Seely. Said letter referred to Kruszewski's November 16, 1979, letter, and set forth the following:

As you know, Eastern Market Beef has requested bargaining over the decision and effects of the contemplated closing of the Alfred Street plant for sometime. On October 30, 1979, I hand carried a letter to the union at a negotiating session relative to same and was ready, willing and able to discuss any aspects of the contemplated closing and effects. On November 2, 1979, November 8, 1979 and November 12, 1979, I wrote the union a letter relative to the foregoing.

It is unfortunate at this late date that the union now desires us to contact them relative to a meeting; it would seem that the union could have called me instead of having you write a letter requesting me to contact them. Be that it as it may, I have this date, sent a telegram to the union requesting to know what dates they are available to meet.

The company not having heard from the union, has gone ahead and made plans for the immediate discontinuance of production effective upon the termination of the contract. We are still ready to discuss the long term future of the plant including the decision and effects of any permanent closure.

Relative to the information you have requested us to tender to the union, we will take that up with the union as requested in the last paragraph of your November 16, 1979 letter. We will, of course, provide the union such information as is required by the National Labor Relations Act as amended.

On November 21, 1979, Local 26 filed a suit in the United States District Court, Eastern District of Michigan, Southern Division. Such suit, against Respondent, was directed toward prohibiting Respondent's closure of the Alfred Street plant.[20] Following the filing of the suit, apparently with notice to Respondent and with the presence of Respondent's attorney, Hyman, in court, United States District Judge, Honorable Ralph M. Freeman, issued a temporary restraining order directed at restraining Respondent from closing its Alfred Street plant. On the same day, after the filing of said suit in court, Respondent filed an unfair labor practice charge against Local 26. Such charge was docketed as Case 7-CB-4620 and alleged that Local 26, since October 1, 1979, had refused to bargain with respect to a decision to close the Alfred Street facility and with respect to the effects of the closing of such facility.

On November 27, 1979, a hearing was conducted, and Judge Freeman dissolved the temporary restraining order issued in Case 9-74420 on November 21, 1979. On the same date or the next day, Respondent closed down its operations at its Alfred Street plant.[21]

On November 28, 1979, the Regional Director for Region 7 of the National Labor Relations Board issued a letter setting forth that he was declining to issue a complaint in Case 7-CA-17014 (involving refusal-to-bargain charges—Sec. 8(a)(5) and (1) of the Act). At some point of time in the first week of December 1979, Respondent and the Union met and discussed certain grievances that were outstanding. On December 7, 1979, Respondent transmitted a letter setting forth in effect a request that the charges in Case 7-CB-4620 be withdrawn. Apparently, the Regional Director approved said withdrawal request on or about that date.

On December 10, 1979, Local 26 initiated an appeal of the Regional Director's decision not to issue a complaint in Case 7-CA-17014. On the same day, Respondent and

[19] I note that the parties during the events spoke of the "closing" of the Alfred Street plant. Further, the facts reveal that, with respect to the operation of the Alfred Street plant, such plant was closed on November 27, 1979. Respondent, however, amended its pleadings to admit only that it ceased operations on or about November 26, 1979.

[20] Docketed as Case 9-74420.

[21] Respondent had planned to cease operations at its Alfred Street plant on November 23, 1979. However, Respondent continued such operations during the time of the pendency of the temporary restraining order issued on November 21, 1979, and ceased its operations after dissolution of the same. Thus, it appears that Respondent ceased its operations of the Alfred Street plant on or about November 27 or 28, 1979.

Local 26 met and negotiated an agreement relating to certain grievances.

On December 18, 1979, Respondent's attorney, Hyman, transmitted a letter to Kruszewski, Local 26's attorney. Certain excerpts from such letter are as follows:

> Enclosed please find documentation pursuant to your request and letter dated November 16, 1979.
>
> Since June 1, 1979 and prior to your letter, the employer moved two 8200 cryovac machines, one bonematic, and a portion of a box conveyor from the Alfred Street facility.
>
> The employer has determined that at the Alfred facility, it costs $9.05 per man per hour to process meat. At the Scott Street facility, it costs approximately $6.93 per man per hour to process meat. These figures do not include any fringe benefits.
>
> Again, I would like to inform you, that the employer is not pleading poverty therefore, we will not permit an examination of the books under any circumstances. By now, it should have become obvious to all parties involved that a meat packing plant in the City of Detroit cannot remain competitive unless the meat is processed on the rail.
>
> In conclusion, if you would review the affidavit previously submitted by Markus Rothbart, it will become obvious to any objective person that 1979 has been a catastrophic year in the meat business.
>
> I am anxiously awaiting your response so that we may make a final decision on whether or not to close the Alfred Street facility.

In January 1980, Respondent let a contract for certain repairs or changes to the Alfred Street plant. The expenditure for such work was in the amount of $33,030.

Later, on February 28, 1980, Respondent's attorney, Hyman, by letter, advised Local 26's attorney, Kruszewski, that Respondent had decided to sell the Alfred Street facility and that the sale was expected to be consummated immediately.

G. *Miscellaneous*

1. Some of the testimony of witnesses and the exhibits in the case suggest that economic considerations had some bearing on Respondent's actions in this case. As to Respondent's actions concerning the acquisition of the Scott Street plant and the attempt to bargain for a new contract in mid-1979, the facts are sufficient only to support a finding that President Rohtbart considered that Respondent would end up with a better financial arrangement with the purchase of such plant, changed operational procedures, and new wage agreements.

The evidence as presented concerning financial conditions covered Respondent and its wholly owned subsidiaries. The record does not reveal what such subsidiaries are. Further, such records for 1980 contained data relating to both the Alfred Street and Scott Street plants and negates a real comparison of the different systems of operation. One of Respondent's letters alludes to the cost of production but excludes therefrom the cost of fringe benefits. Further, Respondent's letters refer to "economic" reasons but also set forth that Respondent was not pleading poverty. In sum, the facts relating to Respondent's initial acquisition of the Scott Street facility and the attempt to negotiate a new contract are sufficient only to show that President Rohtbart believed that Respondent would end up with a better financial arrangement with the purchase of said plant, changed operational procedures, and new wage agreements.

The above affords little help toward the understanding of the events in June 1979, whereby Respondent commenced operations with new employees and different wages and other conditions at Scott Street as compared to Alfred Street. The instant proceeding is not one whereby Respondent planned to and did subcontract work to another employer or where Respondent *ceased* operations entirely because of economic conditions. It can always be said that if a respondent could obtain a different contract with wage rates or other conditions of a nature to be more financially advantageous to itself that such has economic overtones. Such does not constitute a defense, however, to unilateral changes of contractually agreed-to conditions during the time of the contract. In sum, most of the evidence relating to economics has little relevance to the issues in this proceeding.

The same problem as to relevance or materiality of the economic evidence is also presented with respect to Respondent's termination of the Alfred Street employees. As indicated later herein, Respondent's actions in June 1979 in hiring employees for the Scott Street plant and in unilaterally setting wages and conditions were violative of Section 8(a)(1), (3), and (5) of the Act. This being so, Respondent's ultimate November 1979 action of termination of employees without having corrected the earlier unfair labor practice makes the "economic" factors largely immaterial.[22]

2. The evidence relating to a comparison of the operation and other factors pertaining to Respondent's Alfred Street and Scott Street plants may be summarized as follows:

On April 2, 1979, Respondent established two divisions to be known as the Scott Street Division and the Alfred Street Division. Such divisions were to have separate bank accounts, books, and records; transfers of merchandise from one division to the other would be handled by invoice, bills, and checks; and the two divisions were to be handled as separate profit centers. James Richardson was plant manager at Alfred Street prior to June 16, 1979, and appears to have continued such responsibilities thereafter until November 23, 1979. The evidence on such point is scanty. However, Respondent presented into the record a document which Richardson testified was given him around October 23, 1979, by an agent of the United States Department of Agriculture. Such document indicated that it was directed to Plant Manager Richardson and concerned itself with the contention at the Alfred Street plant. The overall tenor of the facts indicates that Richardson functioned as plant manager of both the Alfred Street plant and the Scott Street plant and that he had assistants to help him supervise the

[22] See *Burroughs Corporation*, 214 NLRB 571, 579 (1974).

plants.[23] The facts are clear that Richardson handled labor relations for both plants in the matter of collective bargaining. The customers and suppliers for both the plants were the same. The employees at both the plants were engaged in the fabrication and processing of beef. It may be said that all except a small number of the employees at the Scott Street plant engaged in such fabrication and processing. A few employees at the Scott Street plant engaged in maintenance and laundry work not performed by employees in the bargaining unit at the Alfred Street plant. The testimony of Richardson as to whether rendering work was performed at the Alfred Street plant was confused. It appears that a few employees performed such work at the Scott Street plant and that such rendering work was not performed at the Alfred Street plant.[24]

It appears that, at times before the termination of the Alfred Street plant, Respondent had had to utilize services of public cold storage warehouses. At the Scott Street plant, Respondent had a cold storage warehouse of its own. The record is silent as to whether after June 16, 1979, Respondent, for its Alfred Street plant, utilized its Scott Street plant storage facilities, or whether it had to use public cold storage warehouses. From the overall testimony as to finances, the evidence suggests that Respondent would have used its cold storage warehouse at the Scott Street plant for needs at the Alfred Street plant.[25] Further, Respondent had an automatic weigher at the Scott Street plant and did not have a similar weigher at its Alfred Street plant.

Around the middle of August 1979, Respondent moved its business office from the Alfred Street plant to its Scott Street plant, and commenced its office functions from such changed location. Further, several items of machinery were moved from the Alfred Street plant to the Scott Street plant. Some of such machinery was replaced at the Alfred Street plant by machinery which served the same functions.

H. *Contentions and Conclusions*

1. Hiring of employees and establishment of wages and terms and conditions of employment of employees at Respondent's Scott Street plant

The General Counsel contends and Respondent denies that Respondent discriminatorily selected employees for hiring for commencement of its Scott Street plant operation instead of utilizing the employees who were engaged at Respondent's Alfred Street plant. The General Counsel contends and Respondent denies that Respondent discriminated in employment conditions and refused to bargain with the Union by unilaterally setting wages and terms and conditions of employment for employees at Respondent's Scott Street plant. The General Counsel contends and Respondent denies that Respondent violated Section 8(a)(1), (3), and (5) of the Act by the above-referred-to conduct.

Considering all of the facts, I find merit in the General Counsel's contentions. Thus, the credited facts reveal that Respondent's agents told Local 26's agents that the Alfred Street plant would be closed and that Respondent was going to move its operations to a new facility at Scott Street. Respondent's agents told Local 26 that it desired a new contract geared to its contemplated new type "boning on the rail" operation. Thereafter, despite the fact that the existing contract did not expire until November 22, 1979, the parties attempted to negotiate a new contract. After the parties had reached agreement on all items except certain cost-of-living proposals, Respondent requested Local 26 to submit the same to the membership. Such was done and the proposal was rejected. It was only then, and without notice, that employees outside the bargaining unit were hired. It was also, and without notice, that Respondent instituted at the Scott Street plant new wages and working conditions which were different from the wage scales and conditions of employment in existence at its Alfred Street plant.

Respondent contends in effect that it intended to have two divisions and that it only ceased operations of the Alfred Street plant in November because of certain economic problems. In this regard, only Respondent's minutes of April 2, 1979, tend to support such contention. It should be noted, however, that the handling of the affairs of the Alfred Street plant and the Scott Street plant as contemplated very well could only be a bookkeeping device so as to know clearly the profitability or lack thereof of the "rail-boning" procedure. Contrary to this contention is the fact that Respondent was bargaining with Local 26 for a contract at a time when the old contract was still in existence and would be in existence for 5 or 6 months. Further, no evidence was presented to reveal that Respondent was thinking of refurbishing the Alfred Street plant or that it communicated to the Union that it had refurbished the Alfred Street plant. Even after notices from the USDA in July 1979 of problems to be corrected, Respondent took no steps to correct building problems at the Alfred Street plant. If Respondent had actually planned to continue operations of two plants, I am persuaded that Respondent's request for loans, made *prior* to *October 22, 1979*, would have included amounts sufficient for the Alfred Street plant operation. The sum of the facts reveals that Respondent in May and June had decided to move its Alfred Street plant operation to the Scott Street plant and had determined to utilize its existing bargaining unit as its employee unit at the Scott Street plant. Similar to the reasoning in *N.L.R.B.* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972); and *Howard Johnson Co.* v. *Hotel Employees*, 417 U.S. 249 (1974), Respondent's determinations as set forth above fixed its obligation to bargain with Local 26. This being so, Respondent was not free to determine unilaterally wages and terms and conditions of its Scott Street plant employees since the same were covered by an existing collective-bargaining agreement. It follows that Respondent's unilateral setting of new terms of wages, hours, and conditions of employment constituted conduct

[23] A finding, however, that Richardson from June 16, 1979, onward was plant manager only at Scott Street would not affect the ultimate findings of facts herein.

[24] A different finding as regards the rendering work would not affect the overall findings of facts herein.

[25] A different finding would not affect the overall findings herein.

violative of Section 8(a)(1) and (5) of the Act. It further follows that Respondent's determination to hire employees not in the existing bargaining unit, following bargaining unit employees' rejection of the contract Respondent desired, and in the context wherein Respondent had previously thereto decided to move its bargaining unit employees to the new location at Scott Street, constitutes conduct violative of Section 8(a)(1) and (3) of the Act.[26]

2. The termination of operations at the Alfred Street plant and the termination of these employees

The General Counsel alleges and contends in effect and Respondent denies that Respondent violated Section 8(a)(1), (3), and (5) of the Act by terminating its Alfred Street plant employees and terminating the Alfred Street plant operations on November 27, 1979.

It has been previously found in effect that Respondent had decided before June 1979 that it would move its Alfred Street plant employees to the Scott Street plant, that its bargaining unit at the Scott Street plant would be the Alfred Street plant unit, and that Respondent had bargained with Local 26 on such a basis. This being so, Respondent's contract covering its Alfred Street plant employees covered its Scott Street plant unit, and Respondent was not free to make unilateral changes in the terms and conditions for its Scott Street employees absent consent by the Union. It, thus, was found that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally setting terms and conditions of employment for the Scott Street employees which were different from the existing terms and conditions covering the Alfred Street plant employees.

The facts reveal in effect that commencing around June 16, 1979, Respondent engaged in conduct of discrimination against the Alfred Street plant employees by not employing them at the Scott Street plant under the terms and conditions of the existing collective-bargaining contract with Local 26. The facts also reveal that Respondent gave misinformation to Local 26 and disguised its plans. Such conduct clearly constitutes violation of Section 8(a)(1) and (5) of the Act.

Further, the facts as later set out reveal that Respondent, commencing around June 16, 1979, engaged in conduct violative of Section 8(a)(1) and (2) by rendering aid and assistance to the Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, by recognition of such union and by executing a collective-bargaining agreement with said Union in the face of Local 26's rights and claims, and by other acts.

Considering all of the facts, I find it clear that Respondent terminated its Alfred Street plant and employees of such plant without bargaining with Local 26, and that such conduct was violative of Section 8(a)(5) and (1) of the Act. I also find it clear that Respondent's termination of the Alfred Street employees constituted a discriminatory termination in violation of Section 8(a)(1) and (3) of the Act.

Thus, where the facts reveal that Respondent had determined that its employees at the Scott Street plant would be its Alfred Street plant bargaining unit and thereafter has violated Section 8(a)(1) and (3) of the Act by the hiring of other employees and has violated Section 8(a)(1) and (5) of the Act by unilaterally setting different wages and terms and conditions for the Scott Street employees as compared to the Alfred Street plant employees, absent a correction of such unfair labor practices or other evidence persuasive of good-faith bargaining, the facts preponderate for a finding of failure to bargain in good faith as to the termination of the Alfred Street plant when such occurred. Thus, the facts preponderate for a finding that Respondent's termination of the Alfred Street plant operations constituted conduct violative of Section 8(a)(5) and (1) of the Act. Similarly, where Respondent's discriminatory conduct in the hiring of new employees has not been corrected and in the absence of affirmative steps to eliminate any effect of discrimination upon the Alfred Street plant employees, the facts preponderate for a finding that Respondent's termination of the Alfred Street plant employees on November 27, 1979, constituted discriminatory conduct based on their membership and support of Local 26 and in violation of Section 8(a)(1) and (3) of the Act.

The General Counsel contends and Respondent denies that Respondent violated Section 8(a)(3) and (1) of the Act by not transferring or allowing Alfred Street plant employees to transfer to the Scott Street plant. The facts are clear that the Union clearly sought to have Alfred Street plant employees transferred to the Scott Street plant in November 1979, and that Respondent set forth in effect that it would not do so but would accept "applications" for employment. In the context of all of the facts, such conduct reveals that Respondent has not transferred and has refused to allow Alfred Street plant employees to transfer to Scott Street. In the context of the findings of conduct violative of the Act otherwise, such conduct is found to constitute violations of Section 8(a)(1) and (3) of the Act.

I would note further that the facts reveal that Respondent's letter of October 29, 1979, and statements made by Respondent's agents to the Union revealed in effect that the decision to close Alfred Street had already been made and that negotiations were in real effect only to be about the effects of the closing. Further, the overall facts reveal in my opinion that Respondent, as of June 16, 1979, only intended to operate the Alfred Street plant until the end of the collective-bargaining agreement and that the overall plans were to rid itself of the existing bargaining unit and Local 26 because of difficulties in obtaining the contract Respondent desired.

Briefs and arguments suggest that the factual issues in this case warrant a consideration of "subcontracting" issues. In my opinion, this case does not involve a subcontracting issue. Rather, Respondent planned on moving a bargaining unit of employees from one plant to a different plant and bargained with Local 26 on such basis. Under such circumstances, Respondent's bargaining unit when it hired new employees at the Scott Street plant and when it continued its Alfred Street plant at the

[26] See *P.A. Hayes, Inc. and P.H. Mechanical Corp.*, 226 NLRB 230 (1976).

same time constituted one unit and Respondent violated Section 8(a)(1) and (5) by setting wages and terms and conditions of employment for the Scott Street employees different from those in effect at the Alfred Street plant. Thus, an offer to bargain about the effects of closing of the Alfred Street plant without considering the Alfred Street plant and Scott Street plant employees as part of one bargaining unit in effect constituted a meaningless offer to bargain.

In sum, the facts reveal that Respondent violated Section 8(a)(1) and (5) of the Act by failure to bargain about its decision to close the Alfred Street plant, and violated Section 8(a)(1) and (3) of the Act by its selection of the Alfred Street plant employees for termination as part of a plan to rid itself of its Alfred Street plant bargaining unit and obligation to bargain with Local 26.

3. Recognition and assistance to the NMU

The General Counsel alleges and contends and Respondent denies that Respondent violated Section 8(a)(1) and (2) of the Act by (1) recognizing Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, as the exclusive collective-bargaining agent for employees in a production and maintenance unit at Respondent's Scott Street plant, (2) executing a contract with NMU, (3) assisting NMU in obtaining support from the Scott Street plant employees, (4) granting NMU access to the Scott Street plant during working hours for the purpose of encouraging those employees to sign authorization cards, and (5) threatening to withhold paychecks of employees until they signed membership authorization cards for NMU.

Considering all of the facts, it is clear that Respondent had an obligation to recognize United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, as the exclusive collective-bargaining representative of the employees at the Scott Street plant as the same or extended portion of the established Alfred Street plant unit, at the time when Respondent recognized, and executed a collective-bargaining agreement with, the Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, as the exclusive representative of a P&M unit of employees at the Scott Street plant.[27] Thus, it is clear that Respondent was not free to recognize, or enter into a contractual relationship with, NMU as the representative of the Scott Street plant employees and the recognition and establishment of a contractual relationship with such union for such employee complement clearly constituted unlawful aid and assistance to NMU in violation of Section 8(a)(1) and (2) of the Act.

The facts reveal that Respondent did grant access in June and July 1979 to NMU agents to its Scott Street plant to see employees after Respondent had entered into a contractual relationship with the NMU. Further, it is clear that such NMU agents spoke to employees and solicited employees to sign cards. Whether such cards were union authorization cards or "dues checkoff" cards is not clearly established. For the same reasons previously given, the granting of access to the NMU agents to the Scott Street plant, at a time when Respondent was obligated to recognize and bargain with the United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, clearly constituted unlawful aid and assistance to NMU in violation of Section 8(a)(1) and (2) of the Act.[28]

The General Counsel's allegation relating to a threat was as follows: "On or about August 17, 1979, Respondent through its agent, James Richardson, at its Scott Street plant threatened to withhold the paychecks of its employees until they signed membership authorization cards for NMU."

There was no evidence presented concerning acts by James Richardson. Employee Beeman testified in effect that he commenced work around July 24, 1979, signed a NMU card around August 17, 1979, was told on such date by someone, who he stated was a supervisor named Larry, that he could not get his check because a lady wanted to see him in the office, went to the office and had a short conversation with the lady in the office, and was told that he had to sign a card before he could get his check because Respondent was getting stricter. On cross-examination, Beeman testified that all that "Larry" told him was that the secretary wanted to see him and that he signed some insurance papers while in the office. "Larry" Selig was not presented as a witness on the above issue.[29]

Considering all of the facts, I am not persuaded that the testimony of Beeman has sufficient probative value to establish that an agent of Respondent threatened employees that paychecks would be withheld until they signed union membership authorization cards. First, the supervisor who was alleged to have made such threats was James Richardson. No evidence was presented to reveal that Richardson had any involvement with employee Beeman on the occasion that Beeman allegedly signed a union authorization card.[30] Beeman initially indicated that a supervisor named Larry had told him that he could not get his check, that "the lady wanted to see" him in the office. On cross-examination, Beeman testified that Larry only told him that the lady in the office wanted to see him. Thus, the evidence is insufficient to reveal that a supervisor named Larry threatened Beeman that his check would be withheld until he signed a union

[27] The General Counsel, at the hearing, abandoned any contention that NMU was not designated by a majority of employees in the appropriate bargaining unit at the time of recognition and execution of the collective-bargaining agreement between Respondent and NMU.

[28] As to the issues of whether Respondent has violated Sec. 8(a)(1) and (2) of the Act, I do not find it necessary to determine whether Respondent would have violated the Act if Respondent had not been obligated to recognize and bargain with said Local 26 but, faced with a claim for recognition by said Local 26 and in the face thereof, recognized and bargained with said NMU Union. Nor do I find it necessary to determine whether certain conduct of Respondent, as alleged, would be violative of Sec. 8(a)(1) and (2) of the Act if not undertaken in the face of an obligation to recognize and bargain with Local 26 or a realistic claim for recognition by said Local 26. Further, I find it unnecessary to discuss some of the other evidence relating to aid to NMU since the same would not add to the ultimate findings herein. Thus, the evidence relating to employees, away from the plant, seeing NMU agents getting out of cars driven by a respondent supervisor has little if any value in resolving the issues herein.

[29] Respondent had a supervisor named Laurence "Larry" Selig.

[30] An employee named Jimmy Wheeler was present with Beeman and the lady secretary.

card. Accordingly, the allegation of violative conduct in such regard will be recommended to be dismissed.

I. *The Alleged Discriminatory Discharge*

1. J. C. Bonner

J. C. Bonner was initially employed by Respondent on July 13, 1979, and worked thereafter until he was discharged on August 1, 1979. Bonner was employed as a meat boner and his immediate supervisor was Benny Govaere. Sometime within several days of July 13, 1979, Supervisor Govaere warned Bonner about "disturbing" employees on the workline.

During the last part of July 1979 Dan Calloway, a representative for Local 26, was parking near the entrance to the Scott Street plant. Bonner had known Calloway when Bonner had worked for Wolverine Packing at the Scott Street site. At such time Bonner had been a member of Local 26.

On or about July 29 or 30, 1979, Bonner met with Calloway at noon and had lunch with Calloway. Later, on July 31, 1979, around noontime, Calloway gave Bonner some union authorization cards.[31]

After seeing Calloway, Bonner returned to work. After work, Bonner again saw Calloway and explained that he had not had enough time to get anyone to sign union authorization cards. Bonner told Calloway that the employees had finished work and had started leaving for home.[32] Bonner promised to get some union cards signed for Calloway by the next day.

On August 1, 1979, Bonner and several other employees met Calloway at noon and had lunch with him. Supervisor Selig was observed appearing to be looking where Calloway and Bonner were near the plant entrance. Apparently, the employees with Bonner signed union authorization cards. Bonner had signed a union authorization card on July 31, 1979. Bonner gave these cards to Calloway. At lunch Bonner had a sandwich and several beers.[33]

Bonner returned to work. Later that afternoon, Supervisor Govaere observed that Bonner was walking up and down the production line talking to employees, that employees were at least momentarily stopping from work, and that Bonner appeared to be laughing and joking and was leaving his work station.[34] What occurred then is revealed by the following credited excerpts from Govaere's testimony:

> Q. What, if anything, did you say to him when you called him over to the side.
>
> A. Well, I told him to stop disrupting the line, and at the time I noticed alcohol on his breath, so I told him that I can smell alcohol, and I don't want you disrupting the line. Just calm down, and stay at your station and do your work.
>
> Q. Do you know about what time of the day this was approximately?
>
> A. Shortly after lunch. It would be between say a quarter to one and one o'clock, somewhere in there.
>
> Q. Then what did you do, if anything, after you talked to him?
>
> A. The balance of the day I just observed him.
>
> Q. What did you observe?
>
> A. A continuation of the same thing.
>
> * * * * *
>
> Q. What, if anything, did you do at the end of the shift?
>
> A. I called him in the office, and I told him this was the last straw, because the previous times—
>
> * * * * *
>
> Q. What did you say, if anything, to Mr. Bonner when he was in the office?
>
> A. I said this was the last straw because I had previously warned you within the previous two weeks about disrupting the line, nothing about drinking. I hadn't warned him about that. I told him this was the last straw because of the drinking and the continuation of disturbing the line after I had warned him right after lunch time.

Following this, Govaere terminated Bonner from his employment. An employee named Jordon later spoke to Supervisor Govaere about taking Bonner back in a couple of weeks. Govaere indicated that he would do so.[35] Thereafter, Respondent did not call Bonner back to work.

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[31] The General Counsel's evidence relating to the events leading to Bonner's discharge is contradictory of itself and reveals much confusion. Thus, Bonner testified to the effect that he first saw Calloway on July 31, 1979, that several days later he received union authorization cards, and that the next day he was fired. Calloway's testimony suggests that he first saw Bonner on July 30 or 31, 1979, that he gave him union cards on such occasion, and that Bonner was discharged the next day. Jordon's affidavit indicates that he and others were with Bonner and Calloway on July 30, 1979, that he and Bonner received union cards from Calloway and that Bonner was discharged several days later. Considering the logical consistency of all of the evidence, I find the facts as set forth.

[32] Bonner's testimony concerning the obtaining of signatures to union cards was confused and contradictory. Such testimony did not have the ring of truth. I discredit his testimony to the effect that he received signed union cards at any time prior to the receipt of one or two signed cards while in Calloway's car on August 1, 1979. Although Calloway appeared to be a truthful witness, considering the logical consistency of all of the evidence, Jordon's affidavit relating to cards distributed by Jordon, and Bonner's and Calloway's testimony as a whole, I am persuaded that Calloway's testimony was mistaken as to the number of cards received from Bonner on August 1, 1979, before Bonner's discharge.

[33] Many of the questions directed to Bonner and the other witnesses were leading in nature. To one such question, Bonner replied that he only had "one" beer at lunch. At another point, Bonner replied in effect that "We had a beer or two."

[34] The General Counsel presented testimony through witnesses for the purpose of establishing that Bonner did not talk any more or louder than others, and that his condition was normal. The questions were leading in nature, and the answers to the questions were qualified. Thus, the witnesses qualified their statements and indicated as an example that their answers were "to the best of their knowledge." Howard testified relating to Bonner's condition that "wasn't nothing violent, you know he wasn't intoxicated or nothing you know. At least to my knowledge."

[35] In making these findings I have considered the affidavit of Jordon as evidence and have carefully considered the same in view of Jordon's own interest in the proceedings at the time he gave such affidavit. I do not find the affidavit to be reliable evidence except as is consistent with the facts found herein.

2. Conclusions—discharge of Bonner

The sum of the facts reveals that Bonner engaged in some union activity before his discharge on August 1, 1979, that Bonner was seen by a supervisor with an agent for Local 26 prior to his discharge, and that Respondent has some animus toward Local 26. The facts also reveal, however, that Respondent had warned Bonner, within 2 or 3 weeks of his discharge, about disturbing the production line, that such warning was unrelated to any possible union activity by Bonner, that on August 1, 1979, Bonner did have the odor of alcohol on his breath at work and was away from his work station talking to other employees. I found Govaere to be a thoroughly truthful appearing witness and credit that he observed Bonner's conduct and considered that he was disturbing other employees. Considering all of the evidence, I am persuaded that the facts preponderate for a finding that Respondent discharged Bonner on August 1, 1979, for cause.

3. Elmer Jordon

Jordon started working for Respondent on July 26, 1979. Jordon's job was that of a lugger (loader), and the rate of pay for such job was one of the highest in the plant. On Friday, July 27, 1979, around 3:15 p.m., Jordon spoke to Local 26's agents, Calloway and Armstrong. At the time Jordon, Calloway, and Armstrong were at Calloway's car which was parked on Scott Street near the plant. As Jordon was leaving in Calloway's car, Jordon saw Govaere driving Govaere's car. Apparently there was not a great distance between the two cars.[36]

On July 30, 1979, around 12 to 12:30 p.m., Jordon, an employee named Simmons, and Bonner were in Calloway's car. Calloway gave each some union cards. After work that day Jordon passed out some union authorization cards to fellow employees.

On July 31, 1979, Jordon was at a lunch wagon located close to the plant. At such time Jordon passed out a few union cards to fellow employees. While at the lunch wagon Jordon saw Supervisors Govaere and Selig nearby, approximately 10 feet away. Govaere and Selig were looking at him.[37]

On August 1, 1979, Jordon again passed out some union cards to fellow employees at lunchtime. Later that afternoon Jordon learned that Respondent had discharged Bonner. After work Jordon went and spoke to Govaere about Bonner's discharge. What occurred when Jordon asked Govaere about the reason for Bonner's discharge is revealed by the following excerpts from Jordon's affidavit.

> I asked him why he fired "Pee Wee." He said, "For one thing, Pee Wee has too much mouth." I said "What do you mean too much mouth." He said, "You know what I mean." I said I didn't. He said "Another thing I smelled alcohol on his breath when he come from work." I asked if it interfered with his work. He said, "No, but we don't have them here at all." He said, "If you're not careful you're next." I said, "Man, the guy has a family." I said, "Me and you go back a ways why don't you talk to him in a few days." Benny said, "I'll agree to that." I said, "Will you give me your word?" Benny said, "Yes." Nothing else was said that I can recall.

Jordon went out of the plant and related to Local 26's agents Calloway and Bonner what Govaere had said. Jordon then passed out some union cards to employees who apparently were leaving work. During the time period that Jordon was passing out union cards outside the gate, Govaere drove nearby and apparently momentarily paused.[38]

On or about August 2 or 3, 1979, Jordon passed out and collected some union cards before he punched in for work. Later, employees were told to go to the lunchroom. In the lunchroom were Plant Manager Richardson, some supervisors, and an NMU agent. Richardson told the employees that with cards being passed out that there were rumors that there was not a union there and that he was there to clear it up. There then ensued a discussion about the NMU union. Jordon was one of the employees who asked a question or two about the Union.

After the meeting Jordon asked Richardson what he was going to do about Bonner. Richardson said that it was up to Benny Govaere. Later, around 12:45 p.m., Jordon, at lunchtime, went to Calloway's car which was parked on Scott Street. Calloway and Armstrong, Local 26 agents, and Bonner and another person were present. On such occasion Jordon gave Calloway some cards. While there, Govaere was nearby at the guard shack. On such occasion Govaere looked at Jordon.

On the morning of August 6, 1979, Supervisor Govaere asked Jordon if he could break "fronts." Jordon told Govaere that he could. Govaere instructed Jordon to break fronts. Govaere did so until he was later ordered to unload some trucks. Around noon Jordon was on his way to the lunchroom when he was told by an employee named "Buster" that Calloway wanted to see him. Govaere was nearby at the time.[39] Jordon went outside the plant to Calloway's car. About this time Jordon saw Govaere go to Govaere's car about 12–15 feet away from Calloway's car. Jordon left with Calloway to get a sandwich.

Jordon returned to work and completed his shift. At the end of the shift Jordon was told that Govaere wanted to see him. Jordon then went to see Govaere. What occurred is revealed by the following excerpts from Jordon's affidavit:

> I went downstairs and Benny was waiting at the foot of the steps. He said, "Bouncer, I want to talk to you." I said, "What is it about." He said, "We're going to have to let you go. We don't have enough

[36] The evidence is insufficient to establish that Govaere saw Jordon and Calloway.

[37] The evidence is insufficient to establish that Govaere and Selig were observing Jordon when he was passing out union cards.

[38] The evidence is insufficient to reveal that Jordon was *passing* out *union* cards at the exact time that Govaere drove by and paused. Nor is it sufficient to reveal that the "pause" was more than a stop preceding the entrance into a street.

[39] The evidence is insufficient, however, to establish that Govaere heard what "Buster" said. Buster did not testify in the proceeding.

> work to keep you." I replied, "What do you mean you don't have enough work to keep me you just hired four guys this morning." He said, "We'll call you. You are not a knife man you are lugger." I said, "I said that is what you hired me in as." I told him that [I] make a rail and one half fronts in an hour. [A rail and a half is about 120 fronts.] One job of a knife man is to break fronts.) He said that I had only broken 10 or 12 fronts in an hour. I called him a liar. I asked to see Jim Richardson. He said Jim was gone for the day . . . .

Later that evening Jordon spoke to Richardson about his being laid off. What occurred is revealed by the following credited excerpts from Richardson's testimony.[40]

> We needed approximately a hundred fronts done an hour, and even after a week or two of attempts, he was still down to thirty or forty fronts an hour. So, I told Mr. Jordon that I cannot afford to pay him seven dollars and twenty-five cents an hour, or seven dollars and ten cents an hour, whatever it was back then, and I could not afford to pay him that kind of money just for a laborer's rate, and we were going to have to lay him off until we would build the loading back up.
>
> He said, you mean I am fired.

On August 7, 1979, Jordon returned to speak to Richardson. What occurred is revealed by the following credited excerpts from Richardson's testimony:

> That was in the evening. He came back the next morning at approximately six or six-thirty in the morning, and he approached me in the cooler, and he said, why did you fire me.
>
> I tried to explain to him we really didn't have enough work for him, and that once the operation got going, that I could justify his existence as strictly an unloader because he wasn't working fast enough to handle the other part of it, we would bring him back.
>
> He got all upset and told me, that I would be the last guy—he would be the last guy I would ever fire, and that I would see him another time. I got worried and Bennie happened to be standing there with me. I didn't know whether he was talking about me, or he was talking to Bennie, but anyways I asked him to please leave the plant.
>
> * * * * *
>
> Well, after he told me that, I said, look we are parting company. You are fired. I am not going to have someone threatening me or management.

In addition to the foregoing, Richardson credibly testified to the effect that Jordon was laid off because of lack of need for him as a loader. As indicated, Richardson credibly testified to the effect that Jordon was later fired because of belief of a threat by Jordon.[41]

[40] In the conversation Richardson told Jordon in effect when the loading built back up that he would be hired again.

4. Conclusions concerning Jordon's discharge

The facts are sufficient to establish that, prior to Jordon's discharge, he had engaged in some union activity and at least had been seen by supervisors talking to known Local 26 agents. The facts are also sufficient to reveal that Respondent had some animus against Local 26. However, the facts reveal a legitimate basis for the layoff and ultimate discharge of Jordon. The General Counsel seems to emphasize that Govaere made statements to Jordon, after Bonner's discharge, to the effect that if he were not careful he would be next. However, the total remarks are to the effect that Respondent did not keep employees who had the odor of alcohol on their breath and that Jordon should be careful in such regard. Considering all of this, the facts are insufficient to reveal that Respondent discriminatorily laid off and then fired Jordon. Accordingly, the allegations of unlawful conduct in such regard will be recommended to be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (2), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

With regard to the 8(a)(5) violations, I shall recommend that Respondent, upon request, bargain collectively with United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, concerning the effects upon the represented employees of the plant relocation from Alfred Street to Scott Street, particularly the transfer rights of such employees, and further that Re-

[41] I do not find statements in Jordon's affidavit to the effect that Richardson told him that he was "an instigator" to be reliable. Thus, I note that as to many details set forth in such affidavit that such details have not been corroborated even when there were other potential witnesses. It is clear that Jordon had an interest in the proceeding and that the affidavit *was given after* charges had been filed on his behalf. As noted at the hearing, hearsay statements by Calloway, apparently relating to what Jordon stated that Govaere had said, were rejected. I would note that if the same had been received that such statements in fact are contradictory of Jordon's affidavit. Thus, Calloway's testimony in the nature of an offer of proof was that Jordon said that Govaere said he was an instigator. Jordon's affidavit attributed such remarks to Richardson. There is a great suspicion in this case as to the reliability of testimony of Bonner and of Jordon's affidavit as regards any predischarge distribution of union cards by Jordon and Bonner.

spondent recognize and, upon request, bargain collectively with said Local 26 as the exclusive bargaining representative of all employees who are engaged in janitorial, receiving, boning, breaking, cutting, grinding, slicing, curing, preparing, processing, sealing, wrapping, bagging, prefabricating, of all meat products, sausage, poultry, fish and sea food products, whether such products are fresh, frozen, chilled, cooked, cured, smoked or barbecued, including those employees operating equipment used in wrapping, cubing, tenderizing such meat products and who perform those duties where such products are prepared, employed by the Employer at the facility located at 1545 Alfred Street, or at 1825 Scott Street, Detroit, Michigan, but excluding office clerical employees, guards and supervisors as defined in the Act. Moreover, I shall recommend that during the period of negotiation toward a new contract that Respondent be ordered to maintain in effect the terms of the collective-bargaining agreement with Local 26 which was in force at Respondent's Alfred Street plant at the time of relocation, unless the parties mutually agree to do otherwise, and to apply the provisions of said collective-bargaining agreement to all employees who were members of the bargaining unit at the time of the termination of the Alfred Street plant, including the provisions of said agreement, if any, applicable to laid-off employees, as well as to all employees in the unit as it exists at the Scott Street plant, excepting as to provisions of a nonmandatory nature, or until after an impasse has been reached.

With regard to the 8(a)(2) violations, I shall recommend that Respondent be ordered to withdraw recognition from Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, as the exclusive collective-bargaining representative of any of the employees in the appropriate unit described above as the unit represented by United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, or as the exclusive collective-bargaining representative of a unit described as follows:

> All production and maintenance employees employed by the Respondent at its plant located at 1825 Scott Street, Detroit, Michigan; but excluding office employees, employees of independent contractors, sales personnel, professional employees, and guards and supervisors as defined in the National Labor Relations Act.

I shall also recommend that Respondent be ordered to cease and desist from giving effect to any collective-bargaining agreement with said NMU to the extent that it purports to cover employees in either described unit.

With regard to the 8(a)(3) violations, I shall recommend that Respondent offer the Alfred Street plant employees represented by Local 26, who were terminated as a result of Respondent's unlawful actions, immediate reinstatement at the Alfred Street or Scott Street plants, to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.[42] In addition, I shall recommend that Respondent be required to make whole each of the aforementioned employees for backpay from the date of the discrimination against them to the date that Respondent offers reemployment to them in compliance with the instant decision, backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[43]

Further, as to employees hired at the Scott Street plant at different terms and conditions of employment than those enjoyed by the Alfred Street plant employees, it will be recommended that Respondent make such Scott Street employees whole for loss of wages or other benefits are suffered as a result of Respondent's unilateral setting of wages and terms and conditions of employment for the Scott Street plant. Computations of loss of wages and benefits are to be computed in the same manner as indicated above.

In view of Respondent's widespread violations of Section 8(a)(1), (2), (3), and (5), as referred to above, and the nature of the same revealing a general disregard for employees' fundamental statutory rights, a broad cease-and-desist order will be recommended. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Eastern Market Beef Processing Corp., Alfred and Scott Street Divisions, Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, and Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, each is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminating in the selection of employees for hire, retention, or discharge, and/or by acts which have the inherent effect of discrimination in employment, Respondent has encouraged membership in Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, and discouraged membership in United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, by discriminating in regard to tenure of employment, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. The following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees who are engaged in janitorial, receiving, boning, breaking, cutting, grinding, slicing, curing, preparing, processing, sealing, wrapping, bagging, prefabricating, of all meat products, sau-

[42] Discharging if necessary any employee hired at the Scott Street plant.

[43] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

sage, poultry, fish and sea food products, whether such products are fresh, frozen, chilled, cooked, cured, smoked or barbecued, including those employees operating equipment used in wrapping, cubing, tenderizing such meat products and who perform those duties where such products are prepared employed by the Employer at its facilities or facility located at 1545 Alfred Street, or at 1825 Scott Street, Detroit, Michigan, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Since in or about 1972, and continuing to date, United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, by virtue of a series of collective-bargaining agreements with Respondent, the most recent one being effective from November 22, 1976, until November 22, 1979, has been the designated exclusive collective-bargaining representative of the unit of Respondent's employees described above.

5. By unilaterally setting terms and conditions of employment, by refusing to bargain about the relocation of an existing appropriate collective-bargaining unit, by refusing to bargain about the termination of a part of an existing appropriate collective-bargaining unit, or about the termination of an identifiable group of employees in such appropriate collective-bargaining unit, and by related acts, Respondent has engaged in conduct of refusing to bargain with United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, as exclusive collective-bargaining representative as regards terms and conditions of employment of employees in an appropriate collective-bargaining unit and thereby has violated Section 8(a)(5) and (1) of the Act.

6. By recognizing and entering into a collective-bargaining agreement with, and by rendering aid and assistance to Industrial, Technical, and Professional Employees, a Division of National Maritime Union, AFL-CIO, Respondent has aided and assisted a labor organization and thereby has engaged in conduct violative of Section 8(a)(2) and (1) of the Act.

7. By the foregoing and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, Respondent has engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[44]

The Respondent, Eastern Beef Processing Corporation, Alfred and Scott Street Divisions, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Transferring work or relocating appropriate bargaining unit operations from one plant site to another without giving notice to, bargaining with, or with the consent of the exclusive collective-bargaining representative of said appropriate bargaining unit described hereinafter.

(b) Unilaterally setting wages, fringe benefits, and other terms and conditions of employees in an appropriate bargaining unit or part thereof without giving prior notice to, bargaining with, or with the consent of the exclusive collective-bargaining representative of said appropriate bargaining unit, or otherwise refusing to bargain with said Union in any other manner.

(c) Refusing to transfer or allow employees to transfer from one part of an appropriate bargaining unit to another part of said appropriate bargaining unit because of their membership in United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, or any other labor organization.

(d) Engaging in conduct of giving misinformation or acting in a disguised manner so as to deceive the exclusive collective-bargaining representative of its employees in its representation of the employees in the appropriate bargaining unit described hereinafter with respect to matters of transfers of work or employees or relocation of operations.

(e) Terminating operations or employees without giving notice to, bargaining with, or with the consent of the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit described hereinafter.

(f) Engaging in conduct of relocation of business operations or otherwise discriminating against employees so as to rid itself of contractual obligations or bargaining obligations otherwise with United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, or any other union as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit as follows:

All employees who are engaged in janitorial, receiving, boning, breaking, cutting, grinding, slicing, curing, preparing, processing, sealing, wrapping, bagging, prefabricating, of all meat products, sausage, poultry, fish and sea food products, whether such products are fresh, frozen, chilled, cooked, cured, smoked or barbecued, including those employees operating equipment used in wrapping, cubing, tenderizing such meat products and who perform those duties where such products are prepared employed by the Employer at its facilities or facility located at 1545 Alfred Street, or at 1825 Scott Street, Detroit, Michigan, but excluding office clerical employees, guards and supervisors as defined in the Act.

(g) Granting recognition to, executing a collective-bargaining agreement with, or otherwise maintaining, enforcing, or giving effect to recognition or bargaining agreements with, or otherwise aiding and assisting or granting access to agents thereof to Respondent's prem-

[44] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ises to Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, or aiding or assisting said Union in any other manner to be and/or as the exclusive collective-bargaining representative of any of the employees in the appropriate unit described above or of the employees in the below described unit:

> All production and maintenance employees employed by the Respondent at its plant located at 1825 Scott Street, Detroit, Michigan; but excluding office employees, employees of independent contractors, sales personnel, professional employees, and guards and supervisors as defined in the National Labor Relations Act.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer to the Alfred Street plant employees terminated on or about November 27, 1979, immediate and full reinstatement to the employee's former position, discharging if necessary employees hired for work at the Scott Street plant facility or, if such position no longer exists, to a substantially equivalent position, without prejudice to the employee's seniority or other rights previously enjoyed, and make each whole for any loss of pay or other benefits suffered by reason of the discrimination against each in the manner described above in the section entitled "The Remedy."

(b) Make whole all Scott Street plant employees for any loss of wages or other benefits, if any, suffered as a result of the unilateral institution of different wages, terms, and conditions of employment then in effect in the established bargaining unit.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Withdraw recognition from Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, as the exclusive bargaining representative of any of the employees in the appropriate unit described above as the unit represented by United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, or of the employees in the below-described unit:

> All production and maintenance employees employed by the Respondent at its plant located at 1825 Scott Street, Detroit, Michigan; but excluding office employees, employees of independent contractors, sales personnel, professional employees, and guards and supervisors as defined in the National Labor Relations Act.

(e) Rescind any existing collective-bargaining agreement with Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, covering employees in the above-referred-to bargaining units.

(f) Reimburse all employees for all initiation fees and dues paid by them to Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, through dues checkoff since on or about June 17, 1979.

(g) Recognize United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, as the exclusive collective-bargaining representative of employees at its Alfred Street and/or Scott Street plant in the unit described above in paragraph 1(f), and institute the terms and conditions of employment set forth in the collective-bargaining agreement it had with such Union until November 22, 1979, excepting such provisions which might be of a nonmandatory bargaining type, unless and until the parties have agreed upon a new collective-bargaining agreement or impasse has been reached.

(h) Upon request, bargain in good faith with United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, as exclusive bargaining representative of the employees in the unit of employees described in paragraph 1(f) above, for a new collective-bargaining agreement covering wages, rates of pay, hours, and other terms and conditions of employment, and as to the effects of the relocating of the plant.

(i) Post at Respondent's plants at Detroit, Michigan, copies of the attached notice marked "Appendix."[45] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations of unlawful conduct not specifically found to be violative herein be dismissed.

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[45] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT transfer work or relocate appropriate bargaining unit operations from one plant site to another without giving notice to, bargaining with, or with the consent of the exclusive collective-bargaining representative of said appropriate bargaining unit described hereinafter.

WE WILL NOT unilaterally set wages, fringe benefits, and other terms and conditions of employment in an appropriate bargaining unit or part thereof without giving prior notice to, bargaining with, or with the consent of the exclusive collective-bargaining representative of said appropriate bargaining unit, or refuse to bargain with said union in any other manner.

WE WILL NOT refuse to transfer or allow employees to transfer from one part of an appropriate bargaining unit to another part of said appropriate bargaining unit because of their membership in United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, or any other labor organization.

WE WILL NOT engage in conduct of giving misinformation or act in a disguised manner so as to deceive the exclusive collective-bargaining representative in its representation of the employees in the appropriate bargaining unit described hereinafter with respect to matters of transfers of work or employees or relocation of operations.

WE WILL NOT terminate operations or employees without giving notice to, bargaining with, or with the consent of the exclusive collective-bargaining unit described hereinafter.

WE WILL NOT engage in conduct of relocating of business operations or otherwise discriminate against employees so as to rid ourselves of contractual obligations with or bargaining obligations otherwise with United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, or any other union as the exclusive collective-bargaining representative of employees in the bargaining unit described hereinafter as the appropriate bargaining unit.

WE WILL NOT grant recognition to, execute a collective-bargaining agreement with, or otherwise maintain, enforce, or give effect to recognition or bargaining agreements with, or otherwise aid and assist or grant access to agents thereof to Respondent's premises to Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, or aid and assist said Union in any other manner as the exclusive collective-bargaining representative of any of the employees in the appropriate unit described hereinafter as the appropriate bargaining unit or of the employees in the below-described unit:

All production and maintenance employees employed by us at our plant located at 1825 Scott Street, Detroit, Michigan; but excluding office employees, employees of independent contractors, sales personnel, professional employees, and guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accordance with Section 8(a)(3) of the Act.

WE WILL offer to the Alfred Street plant employees terminated on or about November 27, 1979, immediate and full reinstatement to the employee's former position, discharging if necessary employees hired for work at the Scott Street plant facility or, if such position no longer exists, to a substantially equivalent position, without prejudice to the employee's seniority or other rights previously enjoyed, and make each whole for any loss of pay or other benefits suffered by reason of the discrimination against each, with interest.

WE WILL make whole all Scott Street plant employees for any loss of wages or other benefits, if any, suffered as a result of the unilateral institution of different wages, terms, and conditions of employment then in effect in the established bargaining unit, with interest.

WE WILL withdraw recognition from Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, as the exclusive bargaining representative of any of the employees in the appropriate bargaining unit or as the exclusive collective-bargaining representative of a unit described above.

WE WILL rescind any existing collective-bargaining agreement with Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, AFL-CIO, covering employees in the above-referred-to bargaining unit.

WE WILL reimburse all employees for all initiation fees and dues paid by them to Industrial, Technical, and Professional Employees, a Division of the National Maritime Union, through dues checkoff since on or about June 17, 1979.

WE WILL recognize United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, as the exclusive collective-bargaining representative of employees at our Scott Street plant in the unit described below, and institute the terms and conditions of employment set forth in the collective-bargaining agreement we had with such Union until November 22, 1979, excepting such provisions which might be of a nonmandatory bargaining type, unless and until the parties have agreed upon a new collective-bargaining agreement or impasse has been reached. The appropriate bargaining unit is:

All employees who are engaged in janitorial, receiving, boning, breaking, cutting, grinding, slicing, curing, preparing, processing, sealing, wrapping, bagging, prefabricating, of all meat products, sausage, poultry, fish and sea food products, whether such products are fresh, frozen, chilled, cooked, cured, smoked or barbecued, including those employees operating equipment used in wrapping, cubing, tenderizing such meat products and who perform those duties where such products are prepared employed by us at our facilities or facility located at 1545 Alfred Street, or at 1825 Scott Street, Detroit, Michigan, but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL, upon request, bargain in good faith with United Food and Commercial Workers International Union, Local 26, AFL-CIO-CLC, as exclusive bargaining representative of the employees in the unit of employees described above, for a new collective-bargaining agreement covering wages, rates of pay, hours, and other terms and conditions of employment, and as to the effects of the relocating of our plant.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent provided by Section 8(a)(3) of the Act.

EASTERN MARKET BEEF PROCESSING CORPORATION, ALFRED AND SCOTT STREET DIVISIONS